

**IDAPA 20 - DEPARTMENT OF LANDS**

**20.03.14 - GRAZING LEASES AND CROPLAND LEASES**

**DOCKET NO. 20-0314-0901**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2009.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 59-104(6), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be held as follows:

| <b>WEDNESDAY, AUGUST 19, 2009</b>   | <b>THURSDAY, AUGUST 20, 2009</b>   |
|---|--|
| <b>9:00 am to 11:00 am MDT<br/>Nampa Civic Center<br/>Central Banquet Room<br/>311 Third Street South<br/>Nampa, Idaho</b>                            | <b>10:00 am to Noon MDT<br/>Idaho Dept. of Fish &amp; Game<br/>1345 Barton Rd.<br/>Pocatello, Idaho</b>          |
| <b>1:00 pm to 3:00 pm MDT<br/>Idaho Dept. of Fish &amp; Game<br/>324 South 417 East, Suite 1<br/>Jerome, Idaho</b>                                    | <b>1:00 pm to 3:00 pm MDT<br/>Idaho Dept. of Fish &amp; Game<br/>99 Hwy. 93 North<br/>Salmon, Idaho</b>          |
| <b>2:00 pm to 4:00 pm Pacific Time<br/>(NOTE: 3:00 pm to 5:00 pm MDT)<br/>Idaho Dept. of Fish &amp; Game<br/>3316 16th Street<br/>Lewiston, Idaho</b> | <b>3:00 pm to 5:00 pm MDT<br/>Idaho Dept. of Fish &amp; Game<br/>4279 Commerce Circle<br/>Idaho Falls, Idaho</b> |

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The revisions provide for (1) acceptance of lease applications for competing uses; (2) development of lease terms by the Department and the applicant based on pre-identified criteria; (3) minimum bids at conflict auctions; (4) penalties for applicant withdrawal prior to or after a conflict auction; and (5) new improvement crediting procedures for improvements approved after July 1, 2009.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(a) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The procedures for lease applications and conflict auctions provided for in the current rules have resulted in administrative inefficiencies, uncertainty, and litigation for the Land Board, the Department, and lease applicants. The procedural changes provided by this temporary rule are necessary to establish transparency, fairness, and consistency to the lease application and conflict auction processes—which confers a benefit on all affected groups and citizens. These changes will reduce personnel and operating costs thereby improving the financial performance of the Endowment Land Grazing Program consistent with the Land Board’s and Departments constitutional mandate to maximize financial returns to endowment beneficiaries. The Department further anticipates that the new procedures will benefit the general welfare by increasing competition for state endowment land leases, thereby increasing financial return to endowment beneficiaries.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a temporary rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Bob Brammer, Division Administrator (208) 334-0239.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 26, 2009.

DATED this 6th day of July, 2009.

Bob Brammer  
Division Administrator  
Idaho Department of Lands  
300 North 6<sup>th</sup> Street, Suite 103  
P.O. Box 83720  
Boise, ID 83720-0500  
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**THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 20-0314-0901**

**IDAPA 20**  
**TITLE 03**  
**CHAPTER 14**

**20.03.14 - RULES GOVERNING GRAZING ~~LEASES AND CROPLAND~~, FARMING, CONSERVATION, NONCOMMERCIAL RECREATION, AND COMMUNICATION SITE LEASES**

**000. LEGAL AUTHORITY.**

These rules are promulgated by the Idaho State Board of Land Commissioners pursuant to Section 58-104, Idaho Code. (3-13-02)

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 20.03.14, "Rules Governing Grazing ~~Leases and Cropland~~, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases."

(~~3-13-02~~)(7-1-09)T

02. **Scope.** These rules constitute the Idaho Department of Lands' administrative procedures for leasing of state endowment trust land ~~that is classified as for grazing land or cropland, farming, conservation, noncommercial recreation, communication sites and other uses that are treated similarly under the provisions of Section 58-307, Idaho Code, regarding a ten (10) year lease term restriction, and under the provisions of Section 58-310, Idaho Code regarding lease auctions.~~ These rules shall be construed in a manner consistent with the duties and responsibilities of the Idaho State Board of Land Commissioners as set forth in Title 58, Chapter 3, Idaho Code; Article 9, Sections 3, 7 and 8, of the Idaho Constitution; and Section 5 of the Idaho Admission Bill.

(3-13-02)(7-1-09)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

Idaho Department of Lands, 300 North 6 Sixth Street, Suite 103, Boise, Idaho 83720; office hours are 8 a.m. to 5 p.m. ~~Monday through Friday, except legal holidays~~ (MST); mailing address is Idaho Department of Lands, PO Box 83720, Boise, Idaho 83720-0050.

(3-13-02)(7-1-09)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**007. STATEMENT OF PURPOSE.**

~~These rules apply to the lease of state lands for grazing of domestic livestock and for cropping purposes. The leasing of state lands designated by the Department as grazing and/or cropping lands, for purposes other than grazing and/or cropping, are governed by Section 030 of these rules.~~

(3-13-02)

**008. -- 009. (RESERVED).**

**010. DEFINITIONS.**

01. **Amortization.** The purchase of Department authorized, lessee installed, lease improvements by the Department through allowance of credit to the lessee's annual lease payments. (3-13-02)

02. **Animal Unit Month (AUM).** ~~The amount of forage necessary to feed one (1) cow or one (1) cow with one (1) calf under six (6) months of age or one (1) bull for one (1) month. One (1) yearling is considered seven tenths (.7) of an AUM. Five (5) head of sheep, or five (5) ewes with lambs are considered one (1) AUM. One (1) horse is considered one and one half (1 1/2) AUM.~~

(3-13-02)

03. **Appraisal.** ~~The act or process of estimating the value of Department authorized improvements associated with a lease.~~

(3-13-02)

04. **Assignment.** The Department approved transfer of all, or a portion of, a lessee's right to another person wherein the second person assumes the lease contract with the Department. (3-13-02)

05. **Board.** The Idaho State Board of Land Commissioners or such representatives as may be designated. (3-13-02)

06. **Conflict Application.** ~~An timely application to lease state endowment trust land for grazing or cropland purposes and that is submitted by someone other than the current/former lessee, or, in the case of unleased land, a situation, farming, conservation, noncommercial recreation or communication site use when more than one (1) or more applications is have been submitted for the same parcel and use of the state endowment trust land and for the same or an incompatible use.~~

(3-13-02)(7-1-09)T

07. **Department.** The Idaho Department of Lands. (6-14-88)

- ~~086.~~ **Director.** The Director of the Department of Lands, or such representative as may be designated by the Director. (3-13-02)
- ~~097.~~ **Extension.** An approved delay in the due date of the rental owed on a ~~cropland farming~~ lease without risk of loss of the lease. (3-13-02)(7-1-09)T
- ~~10.~~ **Grazing.** ~~The consumption of forage by domestic livestock.~~ (3-13-02)
- ~~08.~~ **Improvement Valuation.** The Land Board approved process or processes of estimating the value of Department authorized improvements associated with a lease. (7-1-09)T
- ~~1109.~~ **Grazing Management Plan Lease.** A written agreement between the ~~lessee and the~~ Department, ~~or between the lessee and another public agency and approved by the Department, designed to meet the resource objectives identified by the Department~~ and a person containing the terms and conditions upon which the person will be authorized to use state endowment trust land. (3-13-02)(7-1-09)T
- ~~12.~~ **Herd Stock.** ~~Livestock leased or managed, but not owned, by the lessee.~~ (3-13-02)
- ~~130.~~ **Lease Application.** An application to lease state endowment trust land for grazing ~~or cropping,~~ farming, conservation, noncommercial recreation, or communication site purposes. (3-13-02)(7-1-09)T
- ~~141.~~ **Manageable Unit.** A unit of state endowment trust land designated by the Department, geographically configured and sufficiently large to ~~efficiently graze livestock or raise crops~~ achieve the proposed use. (3-13-02)(7-1-09)T
- ~~152.~~ **Mortgage Agreement.** Department authorization for the lessee to obtain a mortgage on a state ~~grazing or cropland~~ lease. (3-13-02)(7-1-09)T
- ~~163.~~ **Person.** An individual, partnership, association, corporation or any other entity qualified to do business in the state of Idaho and any federal, state, county, or local unit of government. (3-13-02)
- ~~174.~~ **Sublease.** An agreement in which the state lease holder conveys the right of use and occupancy of the property to another party on a temporary basis. (3-13-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**020. APPLICATIONS AND PROCESSING.**

- ~~01.~~ **Eligible Applicant.** Any person legally competent to contract may submit an application to lease state ~~owned~~ endowment trust land provided ~~he has reached his eighteenth birthday, or if not eighteen (18) is married, is a citizen of the United States or has declared his intentions to become such, and is not indebted to the state of Idaho~~ or such person is not delinquent on any payments to the state of Idaho. To be eligible for a grazing or cropland lease, an applicant must intend to use the land for domestic livestock grazing or for cropping purposes, and must certify such. (3-13-02)(7-1-09)T
- ~~02.~~ **Application Process.** All lease applications ~~for a state cropland or grazing lease~~ must be submitted to the Department on the appropriate Department form. The applications must be signed by the applicant, must be submitted in such manner as determined by the Department, and must meet the following criteria: (3-13-02)(7-1-09)T
- a.** Non-refundable Fee. Each application for a lease shall be accompanied by a non-refundable application fee in the amount specified by the Board. (3-13-02)

**b.** Application Deadline. The deadline to apply to lease a parcel of state endowment trust land already covered by a lease shall be as established by the Department for the year the existing lease expires. Applications to lease unleased state endowment trust land may be submitted at any time, or at such time as designated by the Department. Applications will be accepted for unleased land when there is no disruption of other designated uses or the Department's long-term management objectives. (3-13-02)(7-1-09)T

**c.** Legal Description on Application. All applications must include a legal description of the state endowment trust land applied on. The Department reserves the right to require an amendment of the legal description of state endowment trust lands identified in a lease application to ensure the parcel is a manageable unit or for any other reason deemed appropriate by the Department. If the applicant fails to provide an amended application, referencing a manageable unit as designated by the Department, within thirty (30) days after mailing such notice, the application shall be considered invalid. (3-13-02)(7-1-09)T

**d.** Management Proposal. All applicants for state grazing leases must submit a grazing management proposal, which addresses Department-identified resource concerns, within thirty (30) days of the deadline to apply for the lease Nonconflicted Applications. (3-13-02)(7-1-09)T

**i.** If the current lessee is the only applicant and the Department does not have concerns with the lessee's current management of the leased state endowment trust land, a new lease will be issued. (7-1-09)T

**ii.** If the current lessee is the only applicant and the Department has concerns with the lessee's current management of the state endowment trust lands, or if the only applicant is not the current lessee, the applicant shall meet with the Department to develop the terms and conditions of a proposed lease specific to the applicant's proposed use. (7-1-09)T

**e.** Conflicted Applications. (7-1-09)T

**i.** All applicants submitting conflict applications shall meet with the Department to develop the terms and conditions of a proposed lease specific to each applicant's proposed use. (7-1-09)T

**ii.** The Department will provide all applicants for conflicted leases with the list of criteria that will be used to develop lease provisions. Among the factors to be addressed in the criteria are the following: (7-1-09)T

**(1)** The applicant's proposed use and the compatibility of that use of the state endowment trust parcel with preserving its long-term leasing viability for purposes of generating maximum return to trust beneficiaries; i.e., the impact of the proposed use and any anticipated improvements on the parcel's future utility and leasing income potential. (7-1-09)T

**(2)** The applicant's legal access to and/or control of land or other resources that will facilitate the proposed use and is relevant to generating maximum return to trust beneficiaries. (7-1-09)T

**(3)** The applicant's previous management of land leases, land management plans, or other experience relevant to the proposed use or ability/willingness to retain individuals with relevant experience. (7-1-09)T

**(4)** Potential environmental and land management constraints that may affect or be relevant to assessing the efficacy or viability of the proposed use. (7-1-09)T

**(5)** Mitigation measures designed to address trust management concerns such as: (7-1-09)T

**(A)** Construction of improvements at lessee's expense. (7-1-09)T

**(B)** Payment by lessee of additional or non-standard administrative costs where the nature of the proposed use and/or the applicant's experience raises a reasonable possibility that greater monitoring or oversight by the Department than historically provided will be necessary to ensure lease-term compliance. (7-1-09)T

**(C)** Bonding to ensure removal of any improvements installed for the lessee's benefit only and which would impair the future utility and leasing income potential of the state endowment trust land. (7-1-09)T

(D) Bonding to ensure future rental payments due under the lease in cases where the lessee is determined by the Department to pose a significant financial risk because of lack of experience or uncertain financial resources. (7-1-09)T

(6) Any other factors the Department deems relevant to the management of the state endowment trust parcel for the proposed use. (7-1-09)T

f. Proposed Lease. Within ten (10) days of the final meeting with the applicant to discuss lease provisions, the Department will provide the applicant with a proposed lease containing those terms and conditions upon which it will lease the state endowment trust land. If the applicant does not accept in writing the lease as proposed by the Department within seven (7) days of receipt, the application will be rejected in writing by the Department. Within twenty (20) days of the date of mailing of the rejection notice, the applicant may appeal the Department's determination as to the lease's terms and conditions to the Land Board. No auction shall be held until the Land Board resolves any such appeal. (7-1-09)T

~~03. Applications for Lands Included in a Cancelled Land Sale Certificate. The prior land sale certificate holder will be given the first option to obtain a lease for those lands covered by the cancelled land sale certificate. If the previous certificate holder is indebted to the state of Idaho, the debt must be satisfied before the certificate holder is eligible to lease the land. If the previous certificate holder declines the opportunity to lease the land, the Department may solicit other applications. The initial lease offered on lands covered under a cancelled land sale certificate must be limited to two (2) years to coincide with the contract reinstatement period. (3-13-02)~~

~~043. Renewals Expiring Leases. Lease renewal applications will be mailed by the Department to all holders of expiring leases no less than thirty (30) days prior to the application deadline. Signed renewal applications and the application fee must be returned to the Department by the established deadline or postmarked no later than midnight of that date. It shall be the lessee's responsibility to ensure applications are delivered or postmarked by the deadline. (3-13-02)(7-1-09)T~~

~~054. Rental Deposit. (3-13-02)~~

~~a. Existing Lessee. An existing lessee is the current lessee of the expiring lease. If the existing lessee is the sole applicant, the existing lessee may submit the rental deposit at the normal due date. If a conflict application is also filed on the expiring lease, and the existing lessee places is awarded the highest bid at auction, lease by the existing Land Board, the lessee must deposit, with the Department, the estimated first year's rental for the lease by the conclusion of the auction at the time the lease is submitted to the Department with lessee's signature. (3-13-02)(7-1-09)T~~

~~b. New Applicants. (7-1-09)T~~

~~i. A new applicant is one who submits an application, but does not hold the current lease. All applicants for unleased land are deemed new applicants. Expiring Lease. New applicants for expiring leases must submit, with the Department, the estimated first year's rental to the Department at the time of the application's submission. (7-1-09)T~~

~~ii. Unleased State Endowment Trust Land. All applicants for unleased state endowment trust land are deemed new applicants. If an applicant for unleased state endowment trust land is the sole applicant, the applicant may submit the rental deposit at the normal billing cycle, unless the time of application and desired time of use do not coincide with the normal billing cycle, in which case payment must be rendered at the direction of the Department. When more than one (1) application is received for unleased state endowment trust land, the all applicants must deposit, with the Department, the estimated first year's rental for the lease prior to auction. (3-13-02)(7-1-09)T~~

~~021. RIGHTS RESERVED TO THE DEPARTMENT.  
The Department expressly reserves the right: (3-13-02)~~

~~01. Reservations. To all mining rights, timber rights, water rights, easements and rights of way, and the fee title to the leased land. (3-13-02)~~

~~02. **Other Leases.** To maintain present, and to issue future mineral, oil and gas, geothermal and other subsurface leases as provided by Title 47, Idaho Code. Annual rental may be adjusted to reflect any utility loss to the lessee from such activities. (3-13-02)~~

~~03. **Grazing Restrictions.** To restrict or prohibit grazing on all, or portions of, the leased land to accommodate other resource management objectives. The lessee will be given one hundred eighty (180) days written notice, prior to turn out of livestock on the lands leased, of any such restrictions or termination of grazing use together with a map of the restricted area. The Department will work with lessee to find alternate forage sources on endowment lands to minimize the financial impact to the endowment. Annual rental will be adjusted to reflect any utility loss to the lessee from such activities should alternate sources of forage not be found. (3-13-02)~~

~~04. **Seed Harvest.** To harvest seed from plants on land not under a cropland lease. The Department will coordinate harvesting activities with lessee to minimize impacts on livestock operations. If loss of use occurs from harvesting activities the rental will be adjusted in the amount of lost use. (3-13-02)~~

~~05. **Entry.** To enter upon and inspect the lands leased at any reasonable time to insure protection of the Department's interest. (3-13-02)~~

~~06. **Easements.** To grant easements and rights of way across or upon the lands leased. The Department shall coordinate with the lessee before processing any easement applications on the leased land. Annual rental will be adjusted to reflect any utility loss to the lessee from any such easements or rights of way. Acreage of the lands described within the lease may be adjusted to reflect any such easements or rights of way that permanently remove such lands from grazing use. (3-13-02)~~

~~07. **Public Access.** To exclusively regulate public access on state lands. Grazing or cropland leases will not be considered exclusive use leases as described under Title 36, Chapter 16, Idaho Code. These rules do not authorize or purport to authorize trespass on private lands to reach state-owned lands. Use of state lands shall not be restricted without prior written approval of the Department. (3-13-02)~~

~~08. **Water Rights.** To all water rights appurtenant to state lands. Lessees may not appropriate any water rights that are appurtenant to state lands, including instream livestock use or stock watering rights. Any water right appropriated on state land shall be appropriated in the name of the state of Idaho. (3-13-02)~~

~~09. **Road Closures.** To close roads for road protection, wildlife protection or administrative purposes. Planned road closures will be reviewed with the lessee prior to action. The lessee will have the right of due process when decisions affect the lessee's use of the lease. (3-13-02)~~

~~10. **Special Leases.** To grant special leases upon the lands described in the grazing lease. If the special lease conflicts with the grazing use or makes consumptive use of forages, the grazing rental will be adjusted to reflect such loss of use. (6-14-88)~~

~~11. **Permanent Improvements.** To claim all permanent improvements placed upon the land remaining after six (6) months in cases of abandonment by the lessee or to take possession immediately in cases of cancellation upon breach of any of the conditions of the lease. No improvements will be disposed of by the Department until all appeals have been exhausted. (3-13-02)~~

**0221. LENGTH OF LEASE.**

The Department may issue a lease for any period of time up to ~~that~~ the maximum term provided by law. (3-13-02)(7-1-09)T

~~0232.~~ - 029. (RESERVED).

**030. RECLASSIFICATION OF CHANGE IN LAND USE.**

The Director may ~~reclassify~~ change the use of any state endowment trust land, in whole or in part, for other uses that will better achieve the objectives of the Board. (3-13-02)(7-1-09)T

**01. Termination of Existing Lease.** In case of ~~reclassification~~ a change in land use to a use other than provided for under these rules, the existing lease may be terminated, in whole or in part, upon one hundred eighty (180) days written notice to the lessee. If a lease is terminated due to ~~reclassification~~ a change in land use, improvement credit will be addressed in accordance with these rules. ~~(3-13-02)(7-1-09)T~~

~~**02. Petition.** Any party may petition the Department to change the designated primary use of the endowment land. The petition shall detail the reasons such a change would be in the best long-term interest of the endowed institution and shall include an accurate legal description of the petitioned lands. The Department will consider such petition, along with supplementary information the Department deems appropriate, and revise the designation, if it believes such redesignation is in the best interest of the beneficiary institution. During the period a petition for redesignation is under consideration, the designated uses of the endowment land will continue. (3-13-02)~~

**031. -- 039. (RESERVED).**

**040. RENTAL.**

**01. Rental Rates.** Rental rates shall be determined by the Board. ~~The rental rate for livestock grazing leases shall be based on the number of allowable AUMs. The rental rate for cropland leases shall be based on the number of acres used for crop production.~~ ~~(3-13-02)(7-1-09)T~~

**02. Special Uses.** Fees for special uses requested by the lessee and approved by the Department, ~~including, but not limited to, concentrated feeding areas or structures/buildings enhancing management of the land~~ in writing as consistent with the primary use granted by the lease, shall be determined by the Department. ~~(3-13-02)(7-1-09)T~~

**03. Rental Due Date.** ~~Cropland~~ Lease rentals are due ~~on or before January 1 and grazing lease rentals are due on or before May 1~~ in accordance with the terms of the lease. ~~(3-13-02)(7-1-09)T~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**042. LATE PAYMENTS.**

Rental not paid by the due date shall be considered late. Late payment charges from the due date forward shall be ~~added to the rental amount. Late payment charges shall be determined by the Board~~ specified in the lease. ~~(3-13-02)(7-1-09)T~~

**043. -- 048. (RESERVED).**

**049. BREACH.**

**01. Non-Compliance.** A lessee is in breach if the lessee's use is not in compliance with the provisions of the lease. ~~This includes, but is not limited to, unauthorized variance in the season of use, in the numbers or class of livestock, in pasture rotation, in improvement construction/maintenance, or in agricultural use.~~ ~~(3-13-02)(7-1-09)T~~

**02. Damages for Breach.** A lessee is responsible for all damages resulting from breach and other damages as provided by law. (3-13-02)

**050. LEASE CANCELLATION.**

Leases may be cancelled by the Director for the following reasons: (3-13-02)

~~**01. Non-Payment of Rental.** If the rental is not paid by the due date, the Department shall notify the lessee in writing of the non-payment. Leases not paid within thirty (30) days of the due date may be cancelled without further notice. (3-13-02)~~

**021. Non-Compliance with Lease Provisions.** If the lessee is not complying with the lease provisions

or ~~management plan provisions or~~ if resource damage attributable to the lessee's management is occurring to state endowment trust land within a lease, the lessee shall be provided written notification of the violation by regular and certified mail. The letter shall set forth the reasons for the Department's cancellation of the lease and shall provide the lessee thirty (30) days notice of the cancellation. (3-13-02)(7-1-09)T

**032. Reclassification Change in Land Use.** A lease may be cancelled in whole or in part upon one hundred eighty (180) days written notice by the Department if the state endowment trust lands are ~~reclassified to be leased~~ for any other use as designated by the Board or the Department and the new use is incompatible with the existing lease. In the event of early cancellation due to ~~reclassification~~ a change in land use, the lessee will be entitled to a prorated refund of the premium bid for a conflicted lease. (3-13-02)(7-1-09)T

**043. Land Sale.** The Department reserves the right to sell state endowment trust lands covered under the lease. The lessee will be notified that the state endowment trust lands are being considered for sale prior to submitting the sales plan to the Board for approval. The lessee will also be notified of a scheduled sale at least thirty (30) days prior to sale. In the event of early cancellation due to land sale, the lessee will be entitled to a prorated refund of the premium bid for a conflicted lease. (3-13-02)(7-1-09)T

**054. Mutual Agreement.** Leases may be cancelled by mutual agreement between the Department and the lessee. (3-13-02)

**051. LEASE REINSTATEMENT.**

**01. After Cancellation for Non-Payment.** A lease may be reinstated within thirty (30) days after cancellation for non-payment when the rental, late payment charges, and a reinstatement fee have been paid. If not reinstated within the time specified the delinquent lessee must file a new lease application to lease the state endowment trust land or the lease may be offered to other parties. (3-13-02)(7-1-09)T

**02. After Cancellation for Other Causes.** Leases cancelled for violation of lease terms or for resource damage may be reinstated by the Department provided the former lessee submits a written request for reinstatement and identifies commits to implement management actions that will address the resource management concerns and mitigate damages that may have occurred, as determined by the Department. (3-13-02)(7-1-09)T

~~**03. Reinstatement. Leases cancelled for non-payment may be reinstated within one (1) year of cancellation if the lands are still unleased and the lessee pays reinstatement fees, plus back rental and interest.**~~ (3-13-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**053. EXTENSIONS OF ANNUAL ~~CROPLAND~~ FARMING LEASE PAYMENT.**

**01. Cropland Farming Lease Extensions.** An extension of the annual lease payment may be approved for ~~cropland farming~~ leases only. Each lease is limited to no more than two (2) successive or five (5) total extensions during any ten (10) year lease period. Requests for extensions must be submitted in writing and must include the extension fee determined by the Board. The lessee must provide a written statement from a financial institution verifying that money is not available for the current year's farming operations. (3-13-02)(7-1-09)T

**02. Liens.** When an extension is approved, the Department will file a lien on the lessee's pertinent crop in a manner provided by Idaho Code. If the subject state endowment trust land is covered under a Conservation Reserve Program contract with the federal government, the lessee must sign a transfer of payment, or a similar form provided by the federal government, transferring the federal payment to the Department if the rental payment is not received by the newly established deadline. (3-13-02)(7-1-09)T

**03. Due Date.** Rental plus interest at a rate established by the Board will be due not later than November 1 of the year the extension is granted. (3-13-02)

~~054. CROPLAND LEASE HARDSHIP CLAIMS.~~

~~01. Crop Loss. Adjustments in rental may be made because of unusual crop loss that occurs through no fault of the lessee. Such loss must be thoroughly substantiated by the lessee. (3-13-02)~~

~~02. Conditions to Meet. To qualify for a hardship claim the following conditions must be met: (3-13-02)~~

~~a. All requests for hardship claims must be submitted to the Department in writing immediately after the damage has occurred. (3-13-02)~~

~~b. Claims will be considered for the current growing season only. (6-14-88)~~

~~c. Any adjustments will be credited to next year's rental. (3-13-02)~~

~~d. Claims will only be approved for losses beyond the control of the lessee. (3-13-02)~~

~~e. The lessee will only receive a reduction in rental for yield losses that occur beyond the normal variation expected for similar land in the situated county. Normal variation will be calculated from the Idaho Statistical Reporting Service records. (3-13-02)~~

~~f. Average yields used to calculate the rental on the subject lands will be used to determine any lease rental adjustments for this purpose. The lease rental will only be adjusted for losses that exceed thirty five percent (35%) of the average crop yield. (3-13-02)~~

~~g. Adjustments will not be made for losses if lessee is compensated through another government program or crop insurance. (6-14-88)~~

054. -- 059. (RESERVED).

060. FEES.

~~Miscellaneous f~~ Fees for lease administration will be periodically set by the Board and must be paid in full before a transaction can occur. All lease administration fees are non refundable. The Board shall have the authority to set fees ~~in~~ related to administration of the leasing process including, but not limited to the following areas: (3-13-02)(7-1-09)T

01. Lease Applications. (3-13-02)

02. Full Lease Assignment. (3-13-02)

03. Partial Lease Assignment. (3-13-02)

04. Mortgage Agreement. (3-13-02)

05. Subleases. (3-13-02)

06. Late Rental Payment. (3-13-02)

07. Lease Reinstatement. (3-13-02)

08. Minimum Lease Fee. (3-13-02)

09. Lease Payment Extension Request. (3-13-02)

~~10. Request For Reclassification Of Land Use. (3-13-02)~~

061. -- 069. (RESERVED).

**070. SUBLEASING.**

A lessee shall not authorize another person to ~~farm or graze livestock on~~ use state endowment trust land without prior written approval from the Department. The lessee must provide the name and address of sublessee, purpose of sublease, and a copy of the proposed sublease agreement. ~~The sublease must be consistent with the Department resource objectives for the land and will only be approved on an annual basis.~~ Lessee controlled ~~H~~herd ~~S~~stock does not require sublease approval. ~~(3-13-02)(7-1-09)T~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**072. MORTGAGE AGREEMENTS.**

The lessee shall not enter into a mortgage agreement that involves a state ~~grazing or cropland~~ endowment trust land lease without prior written approval of the Department. The lessee must submit the required filing fee. The term of a mortgage agreement shall not exceed the lease term. ~~(3-13-02)(7-1-09)T~~

**073. -- 0789. (RESERVED).**

~~**080. GRAZING MANAGEMENT PLANS.**~~

~~Prior to issuance of a lease, the lessee and the Department must agree to a written grazing management plan.~~ ~~(3-13-02)~~

~~**01. Federal Plan.** When state land is managed in conjunction with federal land, the management plan prepared for the federal land may be deemed by the Department, at its discretion, to satisfy the requirements of a management plan.~~ ~~(3-13-02)~~

~~**02. Modification of Plan.** The Department may review and modify any grazing management plan upon changes in conditions, laws, or regulations, provided that the Department shall give the lessee thirty (30) days notice of any such modifications prior to the effective date thereof. Modifications mutually agreeable to both the Department and lessee may be made at any time.~~ ~~(3-13-02)~~

~~**081. -- 089. (RESERVED).**~~

**090. TRESPASS.**

**01. Loss or Waste.** The lessee shall use the property within the lease in such manner as will best protect the state of Idaho against loss or waste. Unauthorized activities occurring on state endowment trust land shall be considered trespass; these include dumping of garbage, constructing improvements without a permit, and other unauthorized actions. ~~(3-13-02)(7-1-09)T~~

**02. Civil Action by Lessee.** The lessee is encouraged to take civil action against owners of trespass livestock on state endowment trust lands to recover damages to the lessee for lost forage or other values incurred by the lessee. ~~(3-13-02)(7-1-09)T~~

**03. Continuing Trespass.** When continued trespass causes resource damage, the Department will initiate proceedings to restrict further trespass and recover damages as necessary. (3-13-02)

**04. Trespass Claims.** Trespass claims initiated by the Department will be assessed as triple the current State AUM rate for forage taken. (3-13-02)

**091. -- 099. (RESERVED).**

**100. CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS.**

**01. Prior Written Approval.** The lessee must secure the written approval of the Department prior to

constructing any improvements or buildings, or clearing any state endowment trust land. Failure to secure such approval shall eliminate any right to an improvement credit and may, at the Department's discretion, be deemed a material breach of the lease and cause for cancellation. Any arrangement for cost sharing or improvement crediting will be ~~expressly stated~~ identified in the improvement permit. Routine farming practices identified in a farm plan will not require prior approval. (3-13-02)(7-1-09)T

**02. Maintenance.** All authorized improvements shall be maintained in functional condition by the lessee. The lessee may be required to remove or reconstruct improvements in poor or non-serviceable condition. Existing maintenance agreements on state endowment trust lands acquired from the federal government shall remain in effect until amended by the parties involved. If maintenance is not being accomplished, the Department shall provide a certified letter to the lessee informing the lessee of the rule violation. If work is not begun within thirty (30) days, the Department may contract repairs and add the amount to the annual rental. Any improvement credit also may be reduced to account for lessee failure to maintain the improvement. (3-13-02)(7-1-09)T

**03. Bond.** ~~If there is a risk of damage to state lands,~~ The Department may require the lessee to furnish a bond prior to constructing improvements as deemed necessary to protect endowment assets or to ensure performance under the lease. (3-13-02)(7-1-09)T

#### **101. IMPROVEMENT CREDIT.**

**01. Sale ~~Or~~ Auction.** In the event of sale of the state endowment trust lands covered under the lease or if the existing lessee is not the successful bidder at the auction of the lease, the ~~appraised and~~ creditable value of the authorized improvements, as determined by the Department, shall be paid to the former lessee by the Department or the purchaser where a sale occurs or by the successful bidder where a new lease is issued. (3-13-02)(7-1-09)T

**02. Exchange.** ~~If the existing lessee has creditable improvements on the land being considered for exchange, the acquiring party, if other than the existing lessee, will be required to enter into agreement with the existing lessee to equitably recognize the value of the improvements.~~ In the event of exchange of the state endowment trust land covered under the lease, the creditable value of authorized improvements, as determined by the Department, shall be paid to the former lessee by the acquiring party, if other than the existing lessee. (3-13-02)(7-1-09)T

**03. Crediting.** Improvement credit may be allowed ~~if the improvement would be of value to anyone who might lease or purchase the land in the future and use it for the purpose for which the land is classified at the time~~ when the Department determines that such credit would further the objective of maximizing long-term financial return to trust beneficiaries if the improvements are: placed on the land and the Department wants the improvement to remain for management purpose. (3-13-02)(7-1-09)T

**a.** Authorized in writing by the Department or lacking written authorization, but in existence prior to 1970; (7-1-09)T

**b.** Not expressly permitted "for lessee's benefit only"; and (7-1-09)T

**c.** Maintained during the lease term. (7-1-09)T

**04. Value Only to Lessee.** Where improvements are approved, but due to their nature, are not acceptable to receive improvement credit because no value exists for a future lessee, a notation shall be made in the permit, "For lessee's benefit only." If the succeeding lessee or assignee chooses not to purchase the non-creditable improvements, the former lessee will be required to remove them. (3-13-02)

**05. Maintenance Costs.** Maintenance of improvements will be considered a normal cost of doing business and no improvement credit will be allowed, except that, with prior written approval from the Department, improvement crediting may be allowed for materials used for the maintenance of Department-funded improvements. (3-13-02)

**06. Unauthorized Improvements.** No credit will be allowed for unauthorized improvements. At the discretion of the Department, the lessee may be required to remove unauthorized improvements. (3-13-02)

**07. Cost Sharing.** Federal or state cost-share amounts shall not be included in the allowable improvement credit. (3-13-02)

**102. VALUATION OF IMPROVEMENTS.**

**01. Existing Improvements.** Creditable improvements existing as of July 1, 2009, will be valued on the basis of replacement cost, including lessee provided labor, equipment and materials, less depreciation based on loss of utility unless otherwise specified in the lease or improvement permit. Improvements cannot be appraised higher than current market value, regardless of lessee's cost. Any improvement amortization or cost limitations identified by the Department will be considered in determining a final value. ~~(3-19-07)~~(7-1-09)T

**02. New Improvements.** Creditable improvements authorized after July 1, 2009 will be subject to an initial value determined by the Department using NRCS improvement cost worksheets or the lessee's actual costs, whichever is less. Such initial value shall be the maximum recognized improvement credit value for any future determinations, provided that the improvements are maintained throughout the term of the lease. (7-1-09)T

**03. Applicant Review of Department Improvement Credit Valuation.** All applicants for a conflicted lease will be provided a copy of the Department's improvement credit valuation for review and a notice of objection form. Any applicant objecting to the appraisal will have twenty-one (21) days from the date of the valuation mailing to submit the notice of objection form to the Department. If no objections are received during the twenty-one (21) day review period, the lease auction will be scheduled and will proceed using the Department's improvement credit valuation. (3-19-07)

**04. Failure to File a Timely Notice of Objection.** Failure to submit a notice of objection within the specified twenty-one (21) day period will preclude any applicant from further administrative remedies and the auction will proceed using the Department's improvement credit valuation. (3-19-07)

**05. Notice of Objection.** Any applicant objecting to the Department improvement credit valuation must submit a complete and timely notice of objection form, and payment of two thousand five hundred dollars (\$2,500) or ten percent (10%) of the total Department improvement credit valuation whichever is greater, to pay for the services of an independent third party. Within five (5) days of receipt of the notice of objection, the Department will notify all applicants in writing that an objection has been received and provide them with a list of certified appraisers. (3-19-07)

**06. Selection of an Independent Third Party.** The applicants will have twenty-one (21) days from the date of the Department's notification of an objection to select by mutual agreement, one individual from the list of certified appraisers to serve as an independent third party. If the applicants cannot agree on an independent third party within the twenty-one (21) day time period, the Department will randomly select one individual from the list to serve as the independent third party. (3-19-07)

**07. Duties of the Independent Third Party.** The independent third party will review the Department improvement credit valuation and alternate valuations provided by the applicants. Following this review, the independent third party will select from among the Department valuation and alternate valuations, the one value that (s)he determines is the most accurate value of the improvements. The independent third party will notify the Department of this value in writing. (3-19-07)

**08. Notification of Final Improvement Value.** Within five (5) days of receiving the independent third party's final determination of improvement credit value, the Department will mail to each applicant an auction notice which shall reference the independent third party's determined value of improvements. The determination by the independent third party of the improvement value will be deemed final, and the appraised value of improvements will not be allowed as a basis for appeal of the auction. (3-19-07)

**103. -- 104. (RESERVED).**

**105. CONFLICT AUCTIONS.**

**01. Two or More Applicants.** When two (2) or more eligible applicants apply to lease the same state endowment trust land that is currently classified for grazing or cropland use, farming conservation, noncommercial recreation, or communication site purposes and the Department determines the proposed uses are not compatible, the Department shall hold an auction. (3-13-02)(7-1-09)T

**02. Applicant Notification.** At least fourteen (14) days prior to the date of such auction, the Department shall give notice by letter, which notice shall be sent in the course of certified mail to each of the applicants for the lease, notifying them of the time and place such auction is to be held. The notice shall be sent to the name and address as it is given in the application. (3-13-02)

**03. Minimum Bid.** Bidding shall begin at two hundred fifty dollars (\$250) or the cost of preparing any required improvement valuation in connection with the expiring lease, whichever is greater. (7-1-09)T

**034. Auction Bidding.** Each applicant who appears in person or by proxy at the time and place so designated in said notice and bids for the lease shall be deemed to have participated in the auction. A proxy must be authorized by the lease applicant in writing prior to the start of the auction. (3-13-02)

**04. Appearance.** ~~Failure to appear at a scheduled lease auction or to notify the Department of an intent to withdraw from an auction at least three (3) working days prior to a scheduled auction will result in forfeiture of funds deposited, absent extraordinary circumstances. Any applicant not present or represented to bid at the time and place specified shall lose all rights or interest in leasing the parcel.~~ (3-13-02)

**05. Withdrawal Prior to Auction.** Applicants who withdraw their applications prior to the auction or fail to participate at the auction forfeit an amount equal to the lesser of the following: (7-1-09)T

**a.** The Department's cost of making any required improvement credit valuation; (7-1-09)T

**b.** For existing lessee applicants, any improvement credit payment that would otherwise be due if not awarded the lease; or (7-1-09)T

**c.** For conflict applicants, the rental deposit made. (7-1-09)T

**06. High Bid Deposit.** The high bidder is required to submit payment in the amount of the high bid at the conclusion of the auction. (7-1-09)T

**057. Auction Procedures.** The Department shall ~~establish~~ prescribe the procedures for conducting ~~grazing and cropland conflicted~~ lease auctions. (3-13-02)(7-1-09)T

**08. Withdrawal After Auction.** (7-1-09)T

**a.** If the high bidder withdraws or refuses to accept the lease, the high bid payment will be retained by the Department. (7-1-09)T

**i.** If the auction involved only two (2) participants, the second high bidder shall be awarded the lease. (7-1-09)T

**ii.** If the auction involved more than two (2) participants, the lease will be reauctioned. (7-1-09)T

**b.** If an auction bidder other than the high bidder withdraws a bid before Land Board review and action on the auction results, no adjustment will be made in the payment deposited by the high bidder. (7-1-09)T

**106. BOARD REVIEW OF AUCTION.**

The Board may will review all bids submitted at a lease auction and shall have the power to reject any and all bids made at such auctions when, in their judgement: the proposed leases and auction results and make the determination required under Section 58-310, Idaho Code, consistent with its obligations under Article IX, Section 8 of the Idaho Constitution and all relevant statutory provisions. (3-13-02)(7-1-09)T

- ~~01. **Fraud or Collusion.** There has been fraud or collusion. (3-13-02)~~
- ~~02. **Other Reasons.** There are other reasons that justify the rejection of said bids. (3-13-02)~~

107. -- 110. (RESERVED).

**111. NOXIOUS WEED CONTROL.**

**01. Weed Control.** The lessee shall cooperate with the Department, or any other authorized agency, to undertake programs for control or eradication of noxious weeds on state endowment trust land. The lessee shall take measures to control noxious weeds on the leased land in accordance with Title 22, Chapter 24, Idaho Code, ~~except those resulting from activities beyond the lessee's control.~~ (3-13-02)(7-1-09)T

**02. Responsibility.** The lessee will not be held responsible for the control of noxious weeds resulting from other land management activities such as temporary permits, easements, special leases and timber sales. Costs for control of noxious weeds on the leased state grazing endowment trust lands shall be shared by the responsibility of the lessee and Department, with the Department's share subject to funds appropriated for that purpose unless otherwise provided for in the lease. (3-13-02)(7-1-09)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**114. LIABILITY (INDEMNITY).**

The lessee shall indemnify and hold harmless the state of Idaho, its departments, agencies and employees for any and all claims, actions, damages, costs and expenses which may arise by reason of lessee's occupation of the leased ~~premises~~ parcel, or the occupation of the leased ~~premises~~ parcel by any of the lessee's agents or by any person occupying the same with the lessee's permission. (3-13-02)(7-1-09)T

**115. RULES AND LAWS OF THE STATE.**

The lessee shall comply with all applicable rules, regulations and laws of the state of Idaho and the United States insofar as they affect the use of the state endowment trust lands described in the lease. (3-13-02)(7-1-09)T