36.25.117 RENEWAL OF LEASE OR LICENSE AND PREFERENCE RIGHT

(1) The board retains the right to select the best lessee possible to fulfill the operating obligations under any lease. In the exercise of the board's discretion to select the best lessees possible for agriculture and grazing leases, the board recognizes that retention of stable, long-term lessees who are familiar with the operating history and characteristics of the leases promotes good stewardship of the land. Such security of land tenure encourages the lessees to place and develop improvements which, in turn, increase the productivity of the land and improve its management. Consequently, it is the board's policy to allow an incumbent lessee in good standing a preference right to meet the high bid and retain the lease.

(2) A current lessee or licensee shall be sent an application to renew the lease or license if all rentals due are paid. The application shall be accepted under the same conditions as specified in ARM 36.25.115; however, applications for renewal will only be accepted after December 1 of the year preceding the expiration of the lease or license and must be postmarked on or before January 28 of the year of expiration of the lease or license. Failure to submit a renewal application by the lessee or licensee postmarked on or before January 28 will result in an unleased or unlicensed tract and the tract will be subject to the requirements for leasing or licensing an unleased or unlicensed tract under ARM 36.25.115.

(a) If competitive bids have been submitted for such tracts before January 28 and the lessee or licensee has not submitted a renewal application, the bids shall remain confidential and may be returned to the bidder. The tract(s) will then be advertised for bids to qualified bidders as provided under ARM 36.25.115.

(3) Unless the board decides on its own volition and sole discretion that a lease should be given to a better qualified applicant, a surface lessee or licensee who has strictly complied with the applicable conditions set forth in 77-6-113(1), MCA, has a preference right to meet the high bid offered for the lease or license and may retain the lease or license subject to the provisions in (9), if all rentals have been paid and appropriate reports submitted, and (4) has not been violated. When an agricultural lessee or licensee meets the high bid and retains the lease or license, the new rental rate must be paid for all crops harvested after the renewal date even if such crops were planted before the lessee met the high bid. The lease or license shall be renewed at the fair market rental provided no other applications for the lease or license have been received by the department within the time limits set forth by ARM 36.25.116(2). Grazing or agricultural uses on classified forest lands may be terminated if it is determined that the resources under that classification are being damaged or not perpetuated

(a) If during the previous lease term, an existing lessee has violated any condition set out within 77-6-113(1), MCA, the lessee shall not have the right to renew the lease or match any other bids submitted. The department shall notify the lessee if it determines that the lessee has failed to comply with the requirements of 77-6-113(1), MCA. The notice shall include the factual basis for that determination.

(b) The lessee may, within 15 days of receipt of the notice, appeal the decision by requesting an informal hearing before the director or the director's designee. Any individual conducting the hearing shall not have been involved in the original determination to revoke the lessee's preference right. If the director, or the director's designee, concludes that the conditions under 77-6-113(1), MCA, have not been met by the lessee during the previous terms, no preference right shall be recognized. The renewal lease shall then be advertised for competitive bids as provided in ARM 36.25.115.

(c) No applicant shall have the right to seek an administrative hearing to challenge the award of a lease to any lessee chosen by the board under this rule or the board's policies.

(4) For leases or licenses issued for a new lease or license term beginning in 1987 and thereafter, a lessee or licensee who subleases more than one-third of the land under the lease or license may not exercise the preference right at lease renewal if he has subleased the land for more than two years during the term of the lease or license. If such lessee or licensee subleases more than one-third of the land for more than three years during the term of the lease, the department shall cancel the lease.

(a) A lessee or licensee may sublease the land within a lease or license for no more than five years without losing the preference right or subjecting the lease to cancellation during the term of the lease if the land is subleased only to a spouse, son, daughter, adopted child, or sibling of the lessee.

(b) For the purposes of these rules, a lessee or licensee who has accorded another the use of all, or a portion of the allowable AUMs during one year will be deemed to have subleased the entire tract for that year.

(c) The provisions of this rule which state that a preference right will be lost, or that a lease will be cancelled for subleasing do not apply in those instances where:

(i) the approved sublease involved one-third or less of the total acreage in the lease or license; or

(ii) the sublease is considered to be a pasturing agreement pursuant to ARM 36.25.120.

(5) If a lease or license is renewed pursuant to the preference right and it is later discovered that the lessee or licensee was not entitled to exercise such preference right pursuant to (4) during the prior lease or license term, then the renewed lease or license shall be cancelled and readvertised for lease or license. However, the department will retain all rentals paid until the time the renewed lease or license is cancelled. The prior lessee or licensee shall be allowed to bid in this instance.

(6) An exchange of use involving state lands is considered to be a sublease and subject to all the provisions of law which apply to other types of subleases.

(7) A surface lessee or licensee who has lost the opportunity to exercise a preference right because of a sublease or other arrangement may apply to the director and set forth the specific grounds why the lessee or licensee is entitled to a hearing.

(a) The hearing application must be submitted in writing to the director within 15 days of receipt of notice of loss of preference right by the lessee or licensee.

(b) The director shall order a hearing within 20 days if the grounds include a bona fide factual dispute. When such a hearing is granted, the contested case provision of the Montana Administrative Procedure Act, Title 2, chapter 4, MCA (MAPA), shall apply.

(c) The board shall make a final decision after considering the entire record, or may delegate such authority to the director. The director may appoint a hearing examiner from the department's staff or from another source to conduct the hearing and produce proposed findings of fact, proposed conclusions of law, and a proposed order.

(8) If a surface lessee or licensee has lost the opportunity to exercise a preference right because of a sublease or other arrangement and disputes only the legal ground upon which the rights were lost, then the lessee or licensee may apply to the director for a declaratory judgment concerning legal grounds. Such application for declaratory judgment must be submitted in writing to the director within 15 days of the receipt of notice of loss of preference right by the lessee or licensee. The application shall specify the legal grounds which the lessee or licensee disputes. The procedure of applying for and issuing such a declaratory judgment shall be that set forth in MAPA.

(9) If other applications are received by January 28 of the year the lease or license expires, and the lessee or licensee has not violated (4) or 77-6-113(1), MCA, the lessee or licensee shall have a preference right to renew the lease or license provided he meets the high bid for such lease or license. Such bid is deemed to be met if the amount of the high bid is received by the department prior to the expiration of the lease or license or, in the case of agricultural land leased solely on a crop share rental basis, if the lessee or licensee agrees in writing to meet the high bid prior to the expiration of the lease or license.

(a) A lessee or licensee who believes the bid to be excessive may request in writing a hearing before the director after meeting the high bid. The request for a hearing must contain a statement of reasons and supporting evidence why the lessee or licensee believes the bid not to be in the state's best interest. Those reasons, with supporting evidence, must support one or more of the following allegations:

(i) that the bid is above community standards for a lease of such land;

(ii) that the bid would cause damage to the tract; or

(iii) that the bid would impair the land's long-term productivity. The lessee or licensee shall also submit evidence of rental rates for similar land in the area with his request.

(b) The director may grant or deny a request for a hearing. If a hearing is granted, the director shall consider testimony and evidence from the lessee and high bidder regarding the rental rate. The lessee and high bidder may also provide a basis for why they should be selected as the best lessee by the board. In order to determine the best lessee possible, the director may request information from the bidder and the current lessee. This information may include:

(i) an intended grazing or cropland management plan for the new term of the lease;

(ii) experience associated with the classified use for the land;

(iii) other nonstate lands that are fenced and managed in common with the state land;

(iv) intended grazing or cropland improvements that will benefit the health and productivity of the state land;

(v) a weed management plan;

(vi) management goals and objectives and monitoring procedures to determine if they are being met;

(vii) the method or route used to access the state land; and

(viii) any other information the director deems necessary in order to provide a recommendation to the board. The department may incorporate all, or part of this information as terms and conditions in the new lease agreement.

(c) The director shall recommend to the board whether there should be a reduction to the bid rate, and who should be selected as the lessee. The director may recommend to the board that the bid be lowered only if the director feels that it is in the best interests of the state to do so. The hearing is not subject to MAPA and the board may accept or reject the director's recommendation.

(d) The lessee is obligated to lease or license the property at the rate determined by the board. The duty of the board is to achieve fair market value. The lease or licensing of such land shall be such so as to generate revenue commensurate with the highest and best use of the land, or portions thereof, as determined by the department.

(10) Regardless of any provision to the contrary in these rules, at renewal time the board may withdraw any land or portion of land from further leasing or licensing for an indefinite period. The department may provide in any lease or license at the time of execution or renewal that the land may be withdrawn from further leasing or licensing after reasonable notice if the department considers such action to be in the best interests of the state.

(11) When land under lease or license has previously been sold and the certificate of purchase has been cancelled, any later reinstatement of the certificate of purchase shall not have the effect of canceling any lease or license except that the current lessee or licensee shall lose the right to renew the lease.

Authorizing statute(s): 77-1-209, MCA

Implementing statute(s): 77-2-333, 77-6-205, 77-6-210, 77-6-212, MCA

History: NEW, 1987 MAR p. 17, Eff. 1/16/87; AMD, 1988 MAR p. 73, Eff. 1/15/88; TRANS, 1996 MAR p. 2384; AMD, 2004 MAR p. 2918, Eff. 12/3/04; AMD, 2010 MAR p. 1293, Eff. 5/28/10.