This is an amendment to 19.2.8 NMAC, Sections 7, 8, 9, 12, 14, 17, 21 and 22, effective April 15, 2010.

19.2.8.7 DEFINITIONS: The following terms as used in this rule shall have the meaning indicated unless otherwise clearly stated in the text:

A. Agricultural lease - The commissioner's conveyance, in writing, of the right to use and possess the surface of specified state land for the production of crops and other products of the soil, animal husbandry or for other related uses. An agricultural lease may be subject to such other rights and uses on the same land as the commissioner may authorize in writing. The lease instrument shall be in a form and contain such provisions as may be prescribed by the commissioner, which provisions shall be deemed to include all pertinent statutes and state land office Rules in effect at lease issuance or as thereafter amended or promulgated.

B. Agricultural sublease - A transaction or arrangement whereby a lessee grants to another rights or interests conveyed to the lessee by an agricultural lease. A sublease is created when the lessee transfers to another either the possession of the leased premises, or a portion thereof, or the management and control of crops and other products of the soil, animals, or other permitted uses located on the leased premises. A sublease is not created when the lessee retains possession of the leased premises and manages and controls crops and other products of the soil or animals located on the leased premises but not owned by the lessee.

C. Authorized improvements - Improvements placed, made or developed on state lands by a lessee with the express written consent of the commissioner; improvements placed, made or developed on state lands by a lessee that are valued within the limitations prescribed by Section 19-7-51 NMSA 1978; improvements placed, made or developed on state lands prior to March 1, 1955; and, improvements placed, made or developed on state lands after March 1, 1955, but prior to March 1, 1975, provided such improvements are approved in writing by the commissioner on or before October 31, 1993.

D. Cultivated land - State trust land suitable for the production of crops or other products of the soil. Cultivated land may be dry cropland, irrigated cropland, orchards or regularly irrigated pasture.

E. Dry cropland - Cultivated land for which rainfall is the only source of water to produce crops.

F. Grazing land - State trust land suitable for the production and utilization of native forage and on which the ecological plant community is suitable for animal husbandry.

G. Irrigated cropland - Cultivated land for which the primary supply of water to produce crops is from a man-made diversion of ground water or surface water.

H. Lessee - The party of record at the state land office who leases state trust land from the commissioner under an agricultural lease.

I. Open acreage - State trust land which is not leased and has not been withdrawn from leasing by the commissioner as shown on the state land office departmental tract books.

J. Replacement cost less physical deterioration or functional obsolescence - The cost of replacing the improvements, at current prices, with improvements having the same utility equivalent, less a deduction for the total loss in value arising from the physical deterioration or functional obsolescence of the improvement.

K. Simultaneous applications - Two or more valid agricultural lease applications [for open acreage] that apply to lease the same land and that are received at the state land office on the same regular work day.

L. State trust land - Land depicted as within the care, custody and control of the commissioner of public lands by the state land office master title tract books.

M. Unauthorized improvements - Improvements other than authorized improvements placed, made or developed on state trust lands.

[3/11/81, 1/20/84, 9/30/85, 12/1/92, 6/29/96; 19.2.8.7 NMAC - Rn, 19 NMAC 3 SLO 8.7, 09/30/02; A, 04/15/10]

19.2.8.8 AGRICULTURAL LEASES:

A. The commissioner may lease state trust land for agricultural purposes in such manner and upon such terms as the commissioner determines to be in the best interests of the trust for which the lands are held by the state.

B. Each agricultural lessee shall protect the leased state trust lands from waste and trespass.

C. One who leases state trust lands shall fence the lands leased, unless such lands shall be used and managed in conjunction with adjacent land, or are subject to an exchange of use agreement.

[C.] D. Agricultural leases shall be issued for animal husbandry, cultivated land or both, or for other related uses.

 $[\mathbf{D}_{\tau}]$ **<u>E</u>**. The commissioner may, at any time, withhold state trust land from agricultural leasing or reject applications to lease, whether such applications are to lease open acreage, to renew an existing lease, or to lease land

already under lease to another, if the commissioner determines such action is in the best interests of the trust for which the land is held.

 $[\mathbf{E}_{-}]$ \mathbf{F}_{-} All agricultural leases shall be upon forms prescribed by the commissioner and shall contain such terms and conditions as are required by law or as are deemed appropriate by the commissioner. Each lease shall have only one (1) mailing address of record at the state land office regardless of the number of lessees under the lease, and the commissioner shall mail all lease notices to such address of record and no other.

[F.] <u>G.</u> Agricultural leases with terms of five (5) years or less may be issued by the commissioner without advertisement or public auction. All such leases shall commence on October 1st and expire on September 30th; provided, however, leases on open acreage issued after October 1st shall bear the actual date of execution and shall be issued for the balance of that lease year plus no more than four (4) additional years.

[G-] <u>H.</u> Outstanding agricultural leases and permits on lands acquired by the state of New Mexico from the United States shall be honored until their expiration. The lessees under such leases shall have the right as provided by law to match competitive lease bids and obtain new leases. 12/1/02 = 6/20/06; 10.2 8 8 NMAC - Pr 10 NMAC 3 SLO 8 8 00/20/02; A 04/15/101

[12/1/92, 6/29/96; 19.2.8.8 NMAC - Rn, 19 NMAC 3 SLO 8.8, 09/30/02; A, 04/15/10]

19.2.8.9 APPLICATIONS TO LEASE:

[A. Applications for agricultural leases may be filed for state trust lands shown on the state land office departmental tract books as either open acreage or land under lease at the time an application is submitted. A single application shall not, however, be accepted for lands held under more than one (1) existing lease or for both open acreage and lands held by an existing lease.

B. All agricultural lease applications, whether for open acreage or leased land, shall:

(1) be made under oath on forms prescribed by the commissioner; and

(2) include a sworn appraisal of the land applied for, and all improvements located thereon, made by a disinterested party who has personal knowledge and ability to provide a true and accurate assessment of the value of the land and the improvements; provided, however, that an existing lessee applying for a new lease on trust land which the lessee currently leases, in lieu of an appraisal of the improvements shall submit a listing of all improvements located on the land, in addition to the appraisal of the land.

(3) Applications that do not include an appraisal of the land and of the improvements, or a listing of improvements as described in Paragraph (2) of Subsection B of 19.2.8.9 NMAC above, and the required application filing fee and rental and improvement deposits set forth below shall be rejected.

(4) Appraisals and listings of all improvements shall reflect a good faith effort on the part of the person submitting the appraisal or the listing to determine:

(a) whether the improvements are located on the state trust land for which an application to lease is being submitted; and

(b) in the case of an appraisal, the value of the improvements appraised.

C. In addition to the requirements set forth above, agricultural lease applications for open acreage shall be accompanied by:

(1) the lease application filing fee;

(2) deposit of a sum equal to the first year's offered rental, which shall in no case be less than the minimum rent in the schedule of fees, or if fewer than twelve (12) months remain in the period between the date of lease application and the following September 30th, the deposit of an amount equal to the first year's offered rental reduced on a pro rata basis by month; and,

(3) deposit of a sum equal to the appraised value of the authorized improvements on the land applied for or a bill of sale or waiver of payment signed by the holder of the right to compensation for such improvements. The value of the improvements, if in dispute, shall be determined by the commissioner's appraisal.

D. Upon receipt of simultaneous applications, the lease shall be awarded to the applicant offering the highest annual rental or, at the commissioner's discretion, the applications may be rejected; and

(1) the applicants permitted to submit confidential sealed lease bids on forms and pursuant to procedures prescribed by the commissioner with the lease awarded to the applicant who by the date and time specified by the commissioner submits the highest sealed bid, if to anyone; or

(2) the open acreage leased by advertised, competitive bid to the bidder offering the highest annual rental, if to anyone.

E. In addition to the requirements set forth above, agricultural lease applications for a new lease on lands held by the applicant under an existing lease shall be accompanied by:

(1) the lease application filing fee;

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(2) the first year's offered rental, which shall in no case be less than the minimum rent in the schedule of fees; and

(3) shall be filed with the commissioner on or before August 1st of the year in which the existing lease is to expire. The failure to submit the application on or before August 1st shall result in the forfeiture of the lessee's right to obtain the lease by matching the highest annual rental offered by other applicants to lease the same land.

F. In addition to the requirements set forth above, agricultural lease applications to lease lands leased to another under an existing lease shall be made for the entire acreage under lease. Such applications shall be made on or before September 1st in the year in which the existing lease is to expire, and shall be accompanied by:
(1) the lease application filing fee;

(2) deposit of a sum equal to the first year's offered rental which shall in no case be less than the minimum rent in the schedule of fees; and

(3) deposit by money order, cashier's check or certified check of a sum equal to the appraised value of the authorized improvements on the land applied for, or a bill of sale or waiver of payment signed by the holder of the right to compensation for such improvements. The value of the improvements, if in dispute, shall be determined by the commissioner's appraisal.

G. In the event more than one (1) application is filed to lease lands held by an existing agricultural lease, the lease shall be awarded to the applicant offering the highest annual rental; provided that award of such lease for the highest offer is in the best interest of the trust. If, however, the lease is not in default and one (1) of the applicants is the lessee under the existing lease who applied for the new lease prior to August 1st, the commissioner shall notify the lessee in writing of the amount of the highest annual rental offered by another applicant for the lease and the name and address of the applicant offering the highest annual rental. If the lessee matches such offer on or before September 30th, the new lease shall be awarded to the lessee, if to anyone. If the lessee does not apply to lease the land on or before August 1st, and more than one (1) lease application is made on the lease to the applicant offering the such award is in the best interest of the trust. Alternatively, the commissioner may implement the procedures applicable in instances of simultaneous application and award the lease to the applicant of the highest annual rental.

H. One who leases state trust lands shall fence the lands leased, unless such lands shall be used and managed in conjunction with adjacent land, or are subject to an exchange of use agreement.

I. The commissioner shall reject any application to lease state trust lands, whether held under an existing lease or not under lease at the time application is made, if the commissioner determines that the award of a lease to the applicant would not be in the best interests of the trust.

J. All appraisals of improvements made for the purposes of this Rule shall be made on the basis of replacement cost less a deduction for the total loss in value arising from the physical deterioration or functional obsolescence of the improvements, and a value shall be listed separately for each improvement.

K. The inclusion of unauthorized improvements on any appraisal or listing of improvements submitted to the commissioner for any purpose shall not be interpreted as approval of those improvements by the commissioner. Improvements shall be approved only as provided under 19.2.8.17 NMAC "Agricultural Improvements" below.

L. A lessee or applicant submitting a sealed bid in response to the commissioner's request for sealed bids, shall not be permitted to change or supplement that bid after it has been submitted.]

A. Requirements for all applications. Applications for agricultural leases may be filed for state trust lands shown on the state land office departmental tract books as either open acreage or land under lease at the time an application is submitted. The commissioner shall reject any application to lease state trust lands, whether held under an existing lease or not under lease at the time application is made, if the commissioner determines that the award of a lease to the applicant would not be in the best interests of the trust.

(1) A single application shall not be accepted for lands held under more than one (1) existing lease or for both open acreage and lands held by an existing lease.

(2) All agricultural lease applications shall be made under oath on forms prescribed by the commissioner.

(3) All agricultural lease applications shall include a sworn appraisal of the land applied for, and all improvements located thereon, made by a disinterested party who has personal knowledge and ability to provide a true and accurate assessment of the value of the land and the improvements; provided, however, that an existing lessee applying for a new lease on trust land which the lessee currently leases, in lieu of an appraisal of the improvements shall submit a listing of all improvements located on the land, in addition to the appraisal of the land.

(a) All appraisals of improvements made for the purposes of this rule shall be made on the basis of replacement cost less a deduction for the total loss in value arising from the physical deterioration or functional obsolescence of the improvements, and a value shall be listed separately for each improvement.

(b) The inclusion of unauthorized improvements on any appraisal or listing of improvements submitted to the commissioner for any purpose shall not be interpreted as approval of those improvements by the commissioner. Improvements shall be approved only as provided under 19.2.8.17 NMAC "agricultural improvements" below.

B. Application requirements for open acreage. In addition to the requirements set forth in sub-part A above, agricultural lease applications for open acreage shall be accompanied by:

(1) the lease application filing fee;

(2) the deposit of a sum equal to the first year's offered rental, which shall in no case be less than the minimum rent in the schedule of fees, or if fewer than twelve (12) months remain in the period between the date of lease application and the following September 30th, the deposit of an amount equal to the first year's offered rental reduced on a pro rata basis by month; and,

(3) the deposit of a sum equal to the appraised value of the authorized improvements on the land applied for or a bill of sale or waiver of payment signed by the holder of the right to compensation for such improvements.

C. Simultaneous applications for open acreage. Upon receipt of simultaneous applications for open acreage, the lease shall be awarded to the applicant offering the highest annual rental or, at the commissioner's discretion, the applications may be rejected; and

(1) the applicants permitted to submit confidential sealed lease bids on forms and pursuant to procedures prescribed by the commissioner with the lease awarded to the applicant who by the date and time specified by the commissioner submits the highest sealed bid, if to anyone; or

(2) the open acreage leased by advertised, competitive bid to the bidder offering the highest annual rental, if to anyone.

D. Application requirements for renewal. In addition to the requirements set forth in sub-part A above, agricultural lease applications for a new lease on lands held by the applicant under an existing lease shall:

 (1) be accompanied by the lease application filing fee;

(2) be accompanied by the first year's offered rental, which shall in no case be less than the minimum rent in the schedule of fees; and

(3) be filed with the commissioner on or before August 1st of the year in which the existing lease is to expire; the failure to submit the application on or before August 1st shall result in the forfeiture of the lessee's right to obtain the lease by matching the highest annual rental offered by other applicants to lease the same land.

E. Application requirements for competitive bids. In addition to the requirements set forth in Subsection A above, agricultural lease applications to lease lands leased to another under an existing lease shall be made for the entire acreage under lease. Such applications shall be made on or before September 1st in the year in which the existing lease is to expire, and shall be accompanied by:

(1) the lease application filing fee;

(2) the deposit of a sum equal to the first year's offered rental which shall in no case be less than the minimum rent in the schedule of fees; and

(3) the deposit by money order, cashier's check or certified check of a sum equal to the appraised value of the authorized improvements on the land applied for, or a bill of sale or waiver of payment signed by the holder of the right to compensation for such improvements.

F. Determination of competitive bids. In the event more than one (1) application is filed to lease lands held by an existing agricultural lease, the lease shall be awarded to the applicant offering the highest annual rental, provided that such award is in the best interest of the trust. If, however, the lease is not in default and one of the applicants is the lessee under the existing lease who correctly applied for the new lease prior to August 1st, the commissioner shall notify the lessee in writing of the amount of the highest annual rental offered by another applicant for the lease and the name and address of the applicant offering the highest annual rental. If the lessee matches such offer on or before September 30th, the new lease shall be awarded to the lessee, if to anyone. If the lessee does not apply to lease the land on or before August 1st, and more than one (1) lease application is made on the lease to the applicant offering the highest annual rental, provided that such award the lease to the applicant offering the highest annual rental. Alternatively, the commissioner may implement the procedures applicable in instances of simultaneous application set out in Subsection C above.

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G. Improvement value disputes. The value of the improvements, if in dispute, shall be determined by the commissioner's appraisal. If there is a dispute over the value of the improvements as determined by the commissioner, the disputing party must file a contest to determine such value. The parties to such a contest shall be the existing lessee and the competitive bidder.

H. Sealed bids. A lessee or applicant submitting a sealed bid in response to the commissioner's request for sealed bids, shall not be permitted to change or supplement that bid after it has been submitted.

I. Non-conforming applications. Any lease application which is non-conforming to the requirements of this subpart shall be subject to rejection.

(1) Applications that do not include an appraisal of the land and of the improvements, or a listing of improvements as described in Paragraph (2) of Subsection B of 19.2.8.9 NMAC above, and the required application filing fee and rental and improvement deposits set forth below shall be rejected.

(2) If the rejected application is to renew a lease, and such application is not corrected in time, the applicant shall fail to retain the right to match a competitive bid set out in Section 19-7-49 NMSA 1978.

(3) In his discretion, but only in cases where there is no competitive bid, the commissioner may, pursuant to Section 19-7-4 NMSA 1978, grant additional time to correct minor errors or omissions in an application. [3/11/81, 1/20/84, 9/30/85, 12/1/92, 6/29/96; 19.2.8.9 NMAC - Rn, 19 NMAC 3 SLO 8.9, 09/30/02; A, 04/15/10]

19.2.8.12 SUBLEASING:

A. The sublease of an agricultural lease or any portion thereof may be made only with the prior written consent of the commissioner.

(1) A sublease [is not created through the use or occupancy of state trust land with the consent of the lessee, where such use or occupancy did not receive] without the written consent of the commissioner prior to such use or occupancy commencing shall be in violation of Sections 19-6-3 and 5 NMSA 1978.

(2) Sublease applications not submitted to the commissioner for approval within thirty (30) days of their actual execution shall be rejected.

B. Applications to sublease shall be made under oath, on forms prescribed by the commissioner and shall be accompanied by the first year's sublease payment.

C. The sublease payment shall be made by the lessee, in advance, in addition to the annual lease rental, in an amount equal to twenty percent (.20) of the current annual lease rental, but in no instance less than the minimum rent in the schedule of fees for each year or any portion of a year in the sublease term.

(1) Sublease payments shall be computed on an annual basis from October 1st of each year to the following September 30th, and shall be due on the date of sublease application and thereafter, following sublease approval, on the date the annual lease rental is due.

(2) Sublease payment for a portion of a year shall not be prorated but shall be in the same amount as the sublease payment for a full year.

D. No sublease term shall extend beyond the term of its base lease and lease assignment shall result in the automatic termination of any sublease.

[3/11/81, 1/20/84, 9/30/85, 4/8/87, 12/1/92, 6/29/96; 19.2.8.12 NMAC - Rn, 19 NMAC 3 SLO 8.12, 09/30/02; A, 04/15/10]

19.2.8.14 ASSIGNMENTS:

A. With the written consent of the commissioner and the payment to the commissioner of the assignment filing fee, a lessee may assign the lease or the lease rights to any part of the land held thereunder for the remainder of the lease term, provided the lease is not in default and any outstanding collateral lease assignments have either been released or the prospective lease assignee has agreed in writing to assume or take the lease subject to the rights of the collateral assignees.

[(1)] Lease assignments shall be made under oath, upon forms prescribed by the commissioner and shall be accompanied by the lease assignment filing fee.

[(2) Lease assignments not submitted to the commissioner for approval within thirty (30) days of their actual execution shall be rejected.]

B. Upon the commissioner's approval in writing of the lease assignment, the assignment form shall become the leasing instrument.

C. An assignment without the written consent of the commissioner shall be null and void.

D. The assignment of an agricultural lease does not assign the appurtenant water rights. The transfer of water rights to an assignee requires the use of the transfer of ownership form provided by the office of the state engineer.

[3/11/81, 1/20/84, 9/30/85, 12/1/92, 6/29/96; 19.2.8.14 NMAC - Rn, 19 NMAC 3 SLO 8.14, 09/30/02; A, 04/15/10]

19.2.8.17 AGRICULTURAL IMPROVEMENTS:

A. Improvements shall not be placed, made or developed on state trust land without the express written consent of the commissioner unless the cost of the improvement and its placement is within the cost limitations prescribed by Section 19-7-51 NMSA 1978. Improvements shall be placed, made or developed on state trust land only by the lessee of the land on which the improvements are to be located.

B. Applications to place, make or develop improvements on state trust lands held by an agricultural lease shall be made by the lessee upon forms and in the manner prescribed by the commissioner prior to initiation of placement or construction. Each application to place improvements shall:

(1) set forth the type and kind of improvements to be placed, made or developed and their estimated

cost;

(2) specify the legal subdivisions on which the improvements are to be located; and

(3) be accompanied by the filing fee specified in the schedule of fees.

C. Inclusion of unauthorized improvements on any appraisal or listing of improvements submitted to the commissioner for any purpose shall not serve as an application to make, place or develop improvements on state trust lands or be construed as approval of those improvements by the commissioner.

D. Upon completion of an authorized improvement, the lessee shall, by sworn affidavit, notify the commissioner of the improvement's actual cost of acquisition, construction or placement.

E. Removal:

(1) All authorized improvements other than fences and growing crops shall be deemed permanent improvements and shall be removed only upon those terms and conditions to which the commissioner has agreed in writing prior to removal.

(2) All unauthorized improvements placed, made or developed on state trust lands by one acting in the capacity of the lessee of the land on which they are located shall be removed unless the lessee applies for, and the commissioner grants, approval of the improvements. The removal of such unauthorized improvements shall be pursuant to terms and conditions established by the commissioner and shall be solely at the expense of the lessee.

(3) Unauthorized improvements placed, made or developed on state trust land by one not acting in the capacity of the lessee of the lands on which the improvements are located shall be subject to removal, sale or other disposition at the commissioner's discretion.

F. Compensation: A purchaser or lessee of state trust lands on which authorized improvements are located shall provide to the commissioner:

(1) a bill of sale or waiver of payment signed by the holder of the right to improvement compensation; or

(2) payment of the value of such improvements as determined by the commissioner's appraisal. Payment of the value of authorized improvements received by the commissioner shall be remitted to the holder of the right to improvement compensation.

(3) Except as provided below, the commissioner shall recognize the compensability at one hundred (1.00) percent of value for authorized improvements.

(4) The commissioner shall recognize the compensability of all or any of the unauthorized improvements placed on state trust lands by one acting in the capacity of the lessee at any percentage of value, including zero (0.00) percent, but in no case more than seventy-five (.75) percent of value.

(5) The compensability of unauthorized improvements placed, made or developed on state trust lands by one not acting in the capacity of the lessee of the lands on which the improvements are located may be recognized at any percentage of value by the commissioner, including zero percent of value.

(6) In any instance when a lessee's improvements have been cost-shared with a government entity or through a grant, the lessee's compensation shall be equal to the percent, if any, of the original cost paid by the lessee, which percent shall be applied to the value described in Subsection F of 19.2.8.17 NMAC above. [3/11/81, 1/20/84, 9/30/85, 11/4/88, 8/8/89, 12/1/92, 6/29/96; 19.2.8.17 NMAC - Rn, 19 NMAC 3 SLO 8.17, 09/30/02; A, 04/15/10]

19.2.8.21 <u>SURFACE DAMAGES:</u>

A. If lessee is involved in litigation with any other persons or entities for damages connected with their leased trust land, lessee must notify the commissioner as soon as practicable. This notice requirement does not apply to any litigation involving only the lessee's personal or real property.

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B. The notice must be in writing, describe the litigation, and give the case name and court docket number; and the notice must be mailed by certified mail to the Commissioner of Public Lands, Office of General Counsel, P.O. Box 1148, Santa Fe, New Mexico 87504.

C. The commissioner will decide within thirty (30) days after receiving the notice whether to participate in the litigation. If the commissioner decides to participate, lessee will not oppose the commissioner's participation in the litigation; but lessee can choose to oppose or support the commissioner's claims in the litigation. No response from the commissioner within thirty (30) days shall be deemed a decision not to participate. The commissioner's non-participation shall not be a waiver of any claim regarding damages to the trust lands. [3/11/81, 1/20/84, 9/30/85, 10/4/88, 12/1/92, 6/29/96; 19.2.8.21 NMAC - Rn, 19 NMAC 3 SLO 8.21, 09/30/02; 19.2.8.21 NMAC - N, 04/15/10]

[19.2.8.21] <u>19.2.8.22</u> SCHEDULE OF FEES FOR STATE LAND OFFICE RULE RELATING TO AGRICULTURAL LEASES:

A. Each of the following documents shall be accompanied by the appropriate fee as indicated below in order to be accepted for filing. Filing fees are service charges to cover the costs associated with handling the documents and no refunds thereof shall be made. Upon the commissioner's determination that a fee amount set forth below does not cover the costs associated with providing the filing service, the commissioner may change the fee amount without notice of rule amendment or compliance with the rule making procedures established by state land office rule.

- (1) Lease application: \$50.00
- (2) Relinquishment: \$50.00
- (3) Lease assignment: \$50.00
- (4) Collateral assignment: \$70.00
- (5) Release of collateral assignment: \$50.00
- (6) Miscellaneous instruments, e.g., to effect lease transfer on death of lessee: \$10.00
- (7) Application to make improvements: \$30.00
- (8) Application to convert land from one permitted use to another: \$50.00

B. Copies of records, plats, maps and other public information on file with the state land office and their certification as true copies may be obtained at cost.

C. Minimum annual rental for any land leased under an agricultural lease: \$50.00 [19.2.8.22 NMAC - Rn, 19.2.8.21 NMAC, 04/15/10]