

**TITLE 19        NATURAL RESOURCES AND WILDLIFE**  
**CHAPTER 2     STATE TRUST LANDS**  
**PART 3         LEASING OF POTASSIUM, SULPHUR, SODIUM, PHOSPHORUS, AND SIMILAR**  
**MINERALS, AND THEIR SALTS AND COMPOUNDS EXCEPT SODIUM CHLORIDE**

**19.2.3.1        ISSUING AGENCY:** Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P. O. Box 1148, Santa Fe, New Mexico 87501, Phone: (505) 827-5713  
[12/31/1999; 19.2.3.1 NMAC - Rn, 19 NMAC 3. SLO 3.1, 9/30/2002]

**19.2.3.2        SCOPE:** This rule pertains to all potassium, sulphur, sodium, phosphorus, and similar minerals, and their salts and compounds except sodium chloride on those lands held in trust by the commissioner of public lands under the terms of the Enabling Act and subsequent legislation (trust lands). This rule governs lessees of trust lands entered into subsequent to the date of this rule.  
[12/31/1999; 19.2.3.2 NMAC - Rn, 19 NMAC 3. SLO 3.2, 09/30/2002]

**19.2.3.3        STATUTORY AUTHORITY:** The commissioner's authority to manage the trust lands is found in N.M. Const., art. XIII, and in Section 19-1-1 NMSA 1978. The authority to promulgate this rule is found in Section 19-1-2 NMSA 1978.  
[12/31/1999; 19.2.3.3 NMAC - Rn, 19 NMAC 3. SLO 3.3, 9/30/2002]

**19.2.3.4        DURATION:** Permanent.  
[12/31/1999; 19.2.3.4 NMAC - Rn, 19 NMAC 3. SLO 3.4, 9/30/2002]

**19.2.3.5        EFFECTIVE DATE:** March 1, 1984, unless a later date is cited at the end of a section.  
[12/31/1999; 19.2.3.5 NMAC - Rn, 19 NMAC 3. SLO 3.5, 9/30/2002; A, 6/30/2016]

**19.2.3.6        OBJECTIVE:** The objective of 19.2.3 NMAC is to provide for the orderly and lawful administration, and the appropriate development of those minerals covered by this rule on trust lands.  
[12/31/1999; 19.2.3.6 NMAC - Rn, 19 NMAC 3. SLO 3.6, 09/30/2002]

**19.2.3.7        DEFINITIONS:** “Schedule of fees” means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.  
[12/31/1999; 19.2.3.7 NMAC - Rn, 19 NMAC 3. SLO 3.7, 9/30/2002; A, 6/30/2016]

**19.2.3.8        LANDS SUBJECT TO LEASE:** Applications to lease will be considered only for such lands as may be shown to be open for leasing upon the tract books of the New Mexico state land office and, although priority in time of filing ordinarily will determine the preference right to lease, the commissioner reserves the right to reject all applications, at any time before lease issues, and to withhold from leasing or to offer the lease to the highest bidder therefor. Leases may not exceed two thousand five hundred sixty (2,560) acres.  
[12/31/1999; 19.2.3.8 NMAC - Rn, 19 NMAC 3. SLO 3.8, 9/30/2002]

**19.2.3.9        APPLICATIONS:** Each application for lease shall be made with ink or with typewriter, in duplicate, upon forms to be prescribed and furnished by the commissioner, which application shall be acknowledged, shall be accompanied by an application fee as set forth in the schedule of fees, and shall be accompanied by the first (1st) year's rental. In addition, it shall be accompanied by an appraisal, under oath, of the lands and minerals made by some disinterested party upon forms furnished by the New Mexico state land office.  
[12/31/1999; 19.2.3.9 NMAC - Rn, 19 NMAC 3. SLO 3.9, 9/30/2002; A, 6/30/2016]

**19.2.3.10       TERM:** Leases will be made upon forms prescribed and furnished by the commissioner and ordinarily will be for a term of 10 years and so long thereafter as said minerals or any of them are produced in paying quantities from the lands. The commissioner reserves the right to issue leases for a lesser primary or fixed term than 10 years when under the circumstances the commissioner deems a shorter term to be in the best interests of the trust. (See 19.2.3.14 NMAC for extension of term by suspension of production).  
[12/31/1999; 19.2.3.10 NMAC - Rn, 19 NMAC 3. SLO 3.10, 9/30/2002; A, 6/11/2019]

**19.2.3.11 RENTAL:** The rental charge for such leases will be negotiated but shall in no event be less than ten cents (\$.10) per acre, or fraction thereof, payable annually in advance, but the minimum first (1st) year's rental will be one hundred dollars (\$100.00) in any event as provided by Section 19-8-4 NMSA 1978. [12/31/1999; 19.2.3.11 NMAC - Rn, 19 NMAC 3. SLO 3.11, 9/30/2002]

**19.2.3.12 ROYALTIES; REDUCTION IN MINIMUM ROYALTIES:**

**A.** Royalties will be established by the commissioner on a negotiated basis and such royalty shall be computed on the gross value of the product after processing, without deductions of any kind, regardless of the place of sale. The minimum royalty rates for potassium chlorides and sulphates shall be as follows:

**(1) POTASSIUM CHLORIDES\* ROYALTY RATE**

(Grade of Ore Mined)

10.00% K20 or less 2.00%

\*\* \*\*

17.09% K20 or more 5.00%

\*(Mined by conventional methods and based on the K20 grade, as sylvite.)

\*\*Intervening ore grade increments are to be proportioned to the foregoing royalty rate limits and royalty rate to be computed according to the formula:

Royalty rate = 2.00% + [(% K20 grade mined - 10.00% K20) x 0.423077], the K20 grade mined and royalty rate to be determined to the nearest 0.00 percent.

**(2) SULPHATES ROYALTY RATE**

Langbeinite 2.50%

**B.** At the discretion of the commissioner and upon the showing of good cause, the royalties set out above in subsection A of 19.2.3.12 NMAC may be reduced. The lessee must submit a written request to the commissioner outlining the expenses and costs of operating the entire lease, the income from the sale of any leased products and all facts tending to show whether the mines can be successfully operated upon the royalty fixed in the lease.

[12/31/1999; 19.2.3.12 NMAC - Rn, 19 NMAC 3. SLO 3.12, 9/30/2002]

**19.2.3.13 OPERATIONS BEFORE DISCOVERY:**

**A.** Leases will require the lessee, within twelve (12) months from date of lease, unless extension be granted, to begin actual drilling upon the leased lands with machinery and equipment suitable for taking and preserving a core and to prosecute such drilling with reasonable diligence to a prescribed depth or to a depth as may be necessary to penetrate the formations containing the minerals for which the lease has been issued.

**B.** Upon completion of the first (1st) test bore, it will be required that an additional test bore shall be drilled each year thereafter until the number of bores completed shall equal the number of sections of land contained in the lease. Should fractions of sections be involved, a minor fraction of a section shall be disregarded and a major fraction shall be treated as a full section.

**C.** Leases shall provide, however, that where the deposits of the minerals are so situated that prospecting work may effectually be carried on by shafts, tunnels, open cuts or in any manner other than by drilling testbores, such prospecting work may be accepted in lieu of drilling.

**D.** In cases where there has been discovery of minerals in commercial quantities on the lands, or any production of any such minerals on such state land on a commercial basis has begun, any lease may provide for a specified minimum annual production of such minerals in lieu of the requirements of this rule.

[12/31/1999; 19.2.3.13 NMAC - Rn, 19 NMAC 3. SLO 3.13, 9/30/2002]

**19.2.3.14 OPERATIONS AFTER DISCOVERY:** If minerals in commercial quantities shall be discovered on the leased lands, the lessee shall be required to develop and produce the same in commercial quantities with reasonable diligence; provided, however, the commissioner may, after hearing, authorize the suspension of production on such lease or leases for a period not to exceed five (5) years at any one (1) time and in no event shall any suspension be for more than ten (10) years from the date on which the term of the lease would have expired in the absence of suspension of production. Suspensions under this Rule will not be granted unless the commissioner finds:

**A.** temporary conditions exist, with regard to the leased land being mined, which would operate to prevent the mining of the maximum mineable ore in keeping with safe mining practices;

**B.** separate parts of the lands covered by the lease are so situated with respect to other lands owned or leased by the lessee that lessee should be allowed a reasonable time to reach and mine the various parts of the lands covered by the lease in keeping with an orderly mining program and with a view to the proper development and mining of the entire area of which various parts of the lands covered by the lease and other lands are an integral part; or

**C.** temporary marketing conditions are such that the lease cannot be mined and operated except at a loss. Suspensions hereunder extend the term of the lease to coincide with the term of the suspension.  
[12/31/1999; 19.2.3.14 NMAC - Rn, 19 NMAC 3. SLO 3.14, 9/30/2002]

**19.2.3.15 SPECIAL AREA REQUIREMENTS:** The following requirements, applicable only to the area hereinafter named, shall be in addition to, and not in exclusion of, any other rule.

**A.** Mining of minerals held in solution in the natural brines shall be permitted within the area west of the Pecos river south of the south boundary of township 20 south, east of the east boundary of range 21 east, and north of the state line.

**B.** Any wells drilled upon leases issued pursuant to the rules herein, which wells lie within any declared underground water basin, shall, in addition to said rules, conform to the requirements of the state engineer.

**C.** Location, drilling and well record reports will be required to be submitted to the New Mexico state land office on all wells drilled. The standard forms of the New Mexico oil conservation commission shall be used in submitting these reports.

**D.** An analysis of the brine, or solution, found in each well must be submitted upon completion of the well, and annually on the anniversary date of the lease thereafter; provided, however, that such an analysis may be required to be submitted more often if deemed necessary by the commissioner.

**E.** Production reports showing the number of gallons of solution produced by each well in each month shall be submitted monthly in connection with royalty reports showing mineral production, amount sold and the sale price. Such reports shall be submitted no later than the twentieth (20th) day of the next succeeding month.

**F.** In all cases, there shall be reserved to the state a royalty of not less than five percent (5%) of the amount of value of the minerals produced, such royalty to be computed upon the value of said minerals delivered at the nearest or most accessible railroad shipping point. After the primary term of the lease, royalty shall be at the rate of eight percent (8%) of the next sale price, computed as above.

**G.** The minimum rental charge for leases will be ten cents (\$.10) per acre, payable annually in advance, but the minimum rental shall be no less than one hundred dollars (\$100.00) in any event. An application fee as set forth in the schedule of fees will be charged in addition thereto for each application.

**H.** A good and sufficient bond as provided in 19.2.3.17 NMAC shall be filed before a lease may be issued; provided, however, that such bond shall be conditioned to conform with all the provisions of the lease including but not limited to drilling and plugging requirements.

**I.** A lease that includes land held under purchase contract(s), or previously patented with reservation of the minerals to the State, shall comply with additional bond requirements as provided by law.

**J.** A minimum of one (1) well must be drilled for each three hundred twenty (320) acres or fraction thereof encompassed in the lease, must be drilled at the rate of one (1) well the first (1st) year, two (2) the second (2nd) year, and four (4) per year thereafter until the minimum number of wells shall have been drilled. A well, in order to be included in the calculation of minimum requirements, shall be drilled to a depth of seven hundred fifty (750) feet, or through the brine horizon.

**K.** The term of the lease contemplated herein shall be for a five (5) year definite term, and so long thereafter as said minerals or any of them, in paying quantities, are produced by the lessee from the lands embraced in such lease, subject to all of their terms and conditions as set forth in such lease.

[12/31/1999; 19.2.3.15 NMAC - Rn, 19 NMAC 3. SLO 3.15, 09/30/02; A, 6/30/2016]

**19.2.3.16 REPORTS AND INSPECTION:** Monthly reports of operations, production and sale of minerals or materials will be required of lessee to be filed with the commissioner on or before the 20th day of the month following the end of the calendar month of production upon forms prescribed and furnished by the commissioner. The records, books of account and operations pertaining to the mining, extraction, transportation, production, returns, and sales of all ores or minerals taken from the leased lands shall be open and available for field audit and for inspection by the commissioner or the commissioner's authorized agents at all reasonable times.

[12/31/1999; 19.2.3.16 NMAC - Rn, 19 NMAC 3. SLO 3.16, 9/30/2002; A, 6/11/2019]

**19.2.3.17 SURETY:**

**A.** A corporate surety lease performance and surface users improvement damage bond or other surety shall be filed with the commissioner before a lease shall be issued. Such bond shall be in the amount of not less than five hundred dollars (\$500.00) for each section or fraction thereof under lease to the same lessee. Under this rule, 16 legal subdivisions, whether or not included in the same numbered lease, shall be considered a section. Standard bond forms will be furnished by the commissioner upon request.

**B.** Once production is had upon any land leased to a lessee, whether upon one or more leases, such lessee shall file with the commissioner either a new lease performance bond or other surety or shall increase the lessee's existing bond or surety to the sum of ten thousand dollars (\$10,000.00). Provided, however, the commissioner from time to time, for good cause shown, may increase the amount of such lease performance bond to an amount which the commissioner deems necessary to protect the interests of the trust.

**C.** With the approval of the commissioner, a twenty-five thousand dollar (\$25,000.00) bond or other surety may be used at the option of lessee for the use and benefit of the commissioner, to secure surface improvement damage and the performance of the lessee as lessee under one or more state leases or permits for minerals, oil and gas, coal or geothermal resources, or as holder under one or more state rights of way or easements which the lessee has executed with the commissioner. The lessee will be obligated to perform and keep all terms, covenants, conditions and requirements of all state leases for minerals, oil and gas, coal or geothermal resources and of all state rights of way and easements executed with the commissioner, including the payment of royalties when due and compliance with all established mining plans and reclamation requirements.

[12/31/1999; 19.2.3.17 NMAC - Rn, 19 NMAC 3. SLO 3.17, 09/30/02; A, 6/11/2019]

**19.2.3.18 ASSIGNMENT AND RELINQUISHMENT:** No assignment of a lease or any portion thereof will be made except with the approval of the commissioner upon such terms and conditions as the commissioner may require. All assignments shall be upon forms prescribed and furnished by the commissioner, which shall recite, among other things, the consideration received for the assignment. In the event a lessee desires to transfer a portion of the lease, the lessee may do so with the approval of the commissioner by relinquishing that portion to the commissioner in order that a new and separate lease may be issued to the third party. Any lease in good standing may, with the approval of the commissioner and the payment of a fee as set forth in the schedule of fees, be relinquished to the state of New Mexico.

[12/31/1999; 19.2.3.18 NMAC - Rn, 19 NMAC 3. SLO 3.18, 9/30/2002; A, 6/30/2016; A, 6/11/2019]

**19.2.3.19 CANCELLATION:** Leases may be canceled for breach or violation of any of the terms or conditions of the lease or of these rules and regulations; provided, however, that before any such cancellation shall be made, the commissioner shall mail to the lessee, by registered mail addressed to the post office address of such lessee as shown by the records, a thirty (30) day notice of intention to cancel said lease, specifying the default for which the lease is subject to cancellation. Thirty (30) days after such mailing the commissioner may enter cancellation unless the lessee shall have sooner remedied the default to the satisfaction of the commissioner.

[12/31/1999; 19.2.3.19 NMAC - Rn, 19 NMAC 3. SLO 3.19, 9/30/2002]

**19.2.3.20 RESERVATION OF RIGHT TO PURCHASE PRODUCTION:** The commissioner reserves a continuing option to purchase at any time, and from time to time, at the market price prevailing in the area on the date of purchase, all or part of the minerals that may be produced from the lands embraced in all leases issued on or after June 11, 1973. The commissioner may waive this reservation by following the statutory procedure set out in Section 19-14-2 NMSA 1978.

[12/31/1999; 19.2.3.20 NMAC - Rn, 19 NMAC 3. SLO 3.20, 9/30/2002]

**19.2.3.21 [RESERVED]**

[12/31/1999; 19.2.3.21 NMAC - Rn, 19 NMAC 3. SLO 3.21, 9/30/2002; Repealed, 6/30/2016]

#### **HISTORY OF 19.2.3 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under:

CPL 69-5, Rules and Regulations Concerning the Sale, Lease, and Other Disposition of State Trust Lands, filed 9/2/1969;

CPL 71-2, filed 12/16/1971;

CPL 77-1, filed 1/7/1977;

Rule 3, Rules and Regulations Relating to Leasing of State Lands for Potassium, Sulphur, Sodium, Phosphorous, and Other Minerals of Similar Occurrence and Their Salts and Compounds (Excepting, However, Sodium Chloride or Common Salt), filed 3/11/1981;  
SLO Rule 3, filed 1/20/1984;  
SLO Rule 3, filed 3/1/1984;  
SLO RULE 3, Amendment No. 1, filed 6/16/95.

**History of Repealed Material:** [Reserved]