

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 2 STATE TRUST LANDS
PART 8 RELATING TO AGRICULTURAL LEASES

19.2.8.1 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
[6/29/96; 19.2.8.1 NMAC - Rn, 19 NMAC 3 SLO 8.1, 09/30/02]

19.2.8.2 SCOPE: Current and future lessees of state trust lands.
[6/29/96; 19.2.8.2 NMAC - Rn, 19 NMAC 3 SLO 8.2, 09/30/02]

19.2.8.3 STATUTORY AUTHORITY: Section 19-1-23 NMSA 1978.
[6/29/96; 19.2.8.3 NMAC - Rn, 19 NMAC 3 SLO 8.3, 09/30/02]

19.2.8.4 DURATION: Permanent.
[6/29/96; 19.2.8.4 NMAC - Rn, 19 NMAC 3 SLO 8.4, 09/30/02]

19.2.8.5 EFFECTIVE DATE: June 29, 1996, unless a later date is cited at the end of a section.
[6/29/96; 19.2.8.5 NMAC - Rn, 19 NMAC 3 SLO 8.5, 09/30/02; A, 06/30/16]

19.2.8.6 OBJECTIVE: To clarify the definition of an agricultural lease, add specific guidelines for conducting appraisals of improvements located on state trust lands, update and clarify the procedures for documenting a lessee's improvements, delete the provision allowing applications to lease a part of the state trust lands held under an existing lease, require a lessee to fence land held under an agricultural lease unless the land is managed in conjunction with adjoining land, add language clarifying when a sublease is created, clarify aspects of processing multiple applications ("competitive bids") to lease the same trust land, and address other aspects of leasing lands under an agricultural lease of state trust lands.
[6/29/96; 19.2.8.6 NMAC - Rn, 19 NMAC 3 SLO 8.6, 09/30/02]

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. “Schedule of fees” - 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.

L. “Simultaneous applications” - Two or more valid agricultural lease applications that apply to lease the same land and that are received at the state land office on the same regular work day.

M. “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.

N. “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; A, 06/30/16]

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.

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

E. 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.

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.

G. 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.

H. 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.

[12/1/92, 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. 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 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 for open acreage or competitive bid 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. 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, but need not submit an 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 Subsection A above, agricultural lease applications for open acreage shall be accompanied by:

(1) the lease application filing fee as set forth in the schedule of fees;

(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 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 Subsection 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 as set forth in the schedule of fees;

(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 as set forth in the schedule of fees;

(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 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 lease application is made on the leased land on or before September 1st, the commissioner, in the commissioner's discretion, may award the lease to the applicant offering the highest annual rental, provided that such award is in the best interest of the trust. Alternatively, the commissioner may implement the procedures applicable in instances of simultaneous application set out in Subsection C above.

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 does not comply with the requirements of this Section 19.2.8.9 NMAC shall be subject to rejection.

(1) 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.

(2) In the commissioner's 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.

[3/11/1981, 1/20/1984, 9/30/1985, 12/1/1992, 6/29/1996; 19.2.8.9 NMAC - Rn, 19 NMAC 3 SLO 8.9, 9/30/2002; A, 4/15/2010; A, 6/30/2016; A, 6/11/2019]

19.2.8.10 WITHDRAWAL:

A. The commissioner may withdraw from an agricultural lease during its term up to one-half the leased acreage not to exceed six hundred and forty (640) acres provided that:

(1) the commissioner has received a bona fide offer to lease or purchase the lands proposed for withdrawal for uses other than agricultural uses and the offered rental or purchase price indicates the land has a current higher and better value for uses other than agricultural uses;

(2) the commissioner makes a written determination that such withdrawal is in the best interests of the trust for which the land is held and that the land to be withdrawn has a current higher and better value for uses other than agricultural uses; and

(3) the commissioner mails notice of the withdrawal to the lessee by certified mail at least ninety (90) days prior to the date the withdrawal is to be effective and includes with the notice:

(a) a copy of the written determination described in Paragraph (2) of Subsection A of 19.2.8.10 NMAC;

(b) a description of the land to be withdrawn sufficiently detailed to permit identification and location of the land with reasonable accuracy;

(c) the appraised value for uses other than agricultural uses, of the land to be withdrawn; and

(d) a notice to vacate that sets forth the date the withdrawal is to be effective.

B. The commissioner shall not withdraw a portion of the leased lands pursuant to this rule if such withdrawal would adversely affect the lessee's use of water on the remaining portion of the leased lands, unless the lessee has a reasonable alternative to mitigate the adverse effect.

C. The commissioner shall refund to the lessee on a pro rata basis rentals paid in advance on the withdrawn lands for the period of time between the effective withdrawal date and the next following rental payment due date.

D. Upon the sale or lease of the withdrawn land, the owner or subsequent lessee shall fence the withdrawn land from adjoining land that is under agricultural lease.

E. A lessee from whom leased lands are withdrawn, who is entitled to compensation for improvements on lands withdrawn, shall receive such compensation from the subsequent lessee or purchaser of the lands withdrawn, as provided by statute and this rule.

[12/1/92, 6/29/96; 19.2.8.10 NMAC - Rn, 19 NMAC 3 SLO 8.10, 09/30/02]

19.2.8.11 RENTAL:

A. In the absence of a competitive bid, the annual rental for grazing land leased under an agricultural lease shall be determined by the following formula:

Annual rental = \$0.0474 (Base Value) x Carrying Capacity (CC) x Acreage x Economic Variable Index (EVI).

(1) The EVI in any year (t), October 1st through September 30th, is the ratio of the value of a state land office adjustment factor for that year (SLOAF_t) to the value of that same adjustment factor calculated for the base year 1987 (SLOAF₈₇), i.e., SLOAF_t : SLOAF₈₇, or SLOAF_t divided by SLOAF₈₇ (1987 base = 135).

(2) To determine the SLOAF for each year (t+1), the commissioner shall use the following formula, in which the three indices (the western states forage value index (FVI), beef cattle price index (BCPI), and the prices paid index (PPI)) correspond to the United States department of agriculture's annually published indices for the immediately preceding year (t): SLOAF_{t+1} = -14.92 + (1.57 x FVI_t) + (0.26 x BCPI_t) - (0.67 x PPI_t).

B. The commissioner shall determine the carrying capacity for grazing land in accordance with Section 19-7-29 NMSA 1978, which may be redetermined. A lessee seeking a reevaluation and redetermination of the carrying capacity shall submit such forms as may be prescribed by the commissioner.

C. Notwithstanding the application of the formula to determine lease rentals for grazing land, the annual rental shall not be less than the minimum rent set forth in the schedule of fees nor shall it be decreased or increased by more than thirty-three and one-third percent of the preceding year's rental for the same land.

D. The rental for cultivated land or land leased under an agricultural lease for other uses shall be determined by the commissioner.

E. In computing rental on leases issued after October 1st, the rental for a part of a month shall be the same as the rental for a full month.

[3/11/1981, 4/28/1982, 1/20/1984, 9/30/1985, 12/1/1992, 6/29/1996; 19.2.8.11 NMAC - Rn, 19 NMAC 3 SLO 8.11, 9/30/2002; A, 6/11/2019]

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 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]

19.2.8.13 RELINQUISHMENT:

A. With the prior written consent of the commissioner, the release of all outstanding collateral assignments, and the payment to the commissioner of the relinquishment filing fee as set forth in the schedule of fees, any lessee may relinquish to the state a lease that is not in default and the lease shall be cancelled.

(1) The relinquishment filing fee shall be waived if the relinquishment is at the request of the commissioner.

(2) Relinquishments shall be made on forms and in the manner prescribed by the commissioner.

B. A relinquishment without the written consent of the commissioner shall be null and void.

[3/11/81, 1/20/84, 9/30/85, 12/1/92; 19.2.8.13 NMAC - Rn, 19 NMAC 3 SLO 8.13, 09/30/02; A, 06/30/16]

19.2.8.14 ASSIGNMENTS:

A. With the written consent of the commissioner and the payment to the commissioner of the assignment filing fee as set forth in the schedule of fees, 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. Lease assignments shall be made under oath, upon forms prescribed by the commissioner and shall be accompanied by the lease assignment filing fee.

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; A, 06/30/16]

19.2.8.15 COLLATERAL ASSIGNMENTS:

A. With the prior written consent of the commissioner and the payment to the commissioner of the collateral assignment fee as set forth in the schedule of fees, a lessee may assign as collateral security a lease that is not in default; provided, however, that the collateral assignment of more than one (1) lease to secure the same indebtedness shall be made by separate assigning instruments. The collateral assignment of a lease shall not prevent its cancellation by the commissioner.

B. Collateral assignments shall be made upon forms prescribed by the commissioner and shall be accompanied by the collateral assignment fee as set forth in the schedule of fees.

C. The foreclosure of collateral assignments shall be accomplished in the manner provided by law for the foreclosure of chattel mortgages. Upon the filing with the commissioner of documentation proving the bona fide foreclosure and purchase of the lease and the cure of any lease defaults, completed assignment forms, and the required fee, the lease shall be assigned to the purchaser at the foreclosure sale, if such purchaser is otherwise qualified to lease state trust lands.

D. The release of collateral assignments shall be accomplished by the collateral assignee's executing and filing with the commissioner a release upon a form prescribed by the commissioner and accompanied by the release of collateral assignment fee as set forth in the schedule of fees.

(1) The failure of a collateral assignee to execute and file with the commissioner the release of a collateral assignment upon the satisfaction of the debt secured by the assignment shall subject the assignee to the risk of criminal penalties and civil liabilities as provided by law.

(2) The personal representative in the probate of a deceased collateral assignee's estate may release collateral assignments by executing and filing with the commissioner the release and certified copies of such other documents as the commissioner may require.

[3/11/81, 1/20/84, 9/30/85, 12/1/92, 6/29/96; 19.2.8.15 NMAC - Rn, 19 NMAC 3 SLO 8.15, 09/30/02; A, 06/30/16]

19.2.8.16 TRANSFER OF LEASE UPON LESSEE'S DEATH:

A. Certified copies of letters testamentary and the final order in probate or the final order determining heirship, together with the miscellaneous instruments, filing fee and such other documents as the commissioner may require shall be filed with the commissioner in order to transfer a deceased lessee's interest in an agricultural lease. The agricultural lease may be carried on the records of the state land office in the name of the estate until probate or a judicial proceeding determining heirship has been completed.

B. The personal representative of the estate, subject to the normal approval processes of the commissioner, may assign the lease by:

(1) filing with the commissioner certified copies of the death certificate and letters testamentary;

(2) executing the necessary assignment forms;

(3) paying to the commissioner the lease assignment filing fee as set forth in the schedule of fees; and

(4) filing with the commissioner such other documents as the commissioner may require.

C. Except for leases executed by two (2) or more lessees designated as joint tenants with the right of survivorship, in the absence of probate, the lease interest of a deceased lessee shall be transferred on the records of

the state land office during the term of the lease only by filing with the commissioner a certified copy of the certificate of death, the affidavits of the legal heirs as to their claims and the absence of conflicting claims, and such other documentation as the commissioner may require together with the miscellaneous instruments filing fee as set forth in the schedule of fees.

D. If a lease is executed by two (2) or more lessees designated as joint tenants with the right of survivorship, the interest of a deceased lessee may be transferred to the surviving lessees on the records of the state land office by filing with the commissioner the certificate of death together with the miscellaneous instruments filing fee.

E. If the heirs of a deceased lessee include minor children, a certified copy of the proceedings of the appointment of a guardian, conservator or guardian ad litem, together with such other documents as the commissioner may require and the miscellaneous instruments filing fee shall be filed with the commissioner to transfer the deceased lessee's interest in the lease.

F. The lease interest of a non-resident deceased lessee may be transferred by complying with Sections 45-4-101 to -401 NMSA 1978 and any successor provisions and by filing with the commissioner such documents as the commissioner may require together with the miscellaneous instruments filing fee.

[3/11/81, 1/20/84, 9/30/85, 12/1/92, 6/29/96; 19.2.8.16 NMAC - Rn, 19 NMAC 3 SLO 8.16, 09/30/02; A, 06/30/16]

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]

19.2.8.18 CANCELLATION:

- A.** The commissioner may cancel any agricultural lease:
- (1) obtained by fraud;
 - (2) executed through mistake or without authority of law;
 - (3) that is in default for violation of any of the lease terms, covenants or conditions, which include these rules and applicable statutes, including nonpayment of rentals; or
 - (4) that is in default for the lessee's failure to protect the leased lands from trespass or waste.
- B.** The commissioner may enter lease cancellation thirty (30) days after providing the lessee and any collateral assignees with notice of default by certified mail.
- (1) Lease cancellation shall not be made if, within such thirty (30) day period, the lessee shall either comply with the commissioner's demands for cure, or appear before the commissioner and show good cause, as determined by the commissioner, why the lease should not be cancelled.
 - (2) The commissioner may at any time enforce the lien against improvements to satisfy delinquent rentals.
- [3/11/81, 9/30/85, 12/1/92, 6/29/96; 19.2.8.18 NMAC - Rn, 19 NMAC 3 SLO 8.18, 09/30/02]

19.2.8.19 CONVERSION:

- A.** Land held under an agricultural lease may be reclassified from grazing land to cultivated land or from cultivated land to grazing land and the lease amended to permit such use after conversion upon application to the commissioner and receipt of the commissioner's written consent to convert the use of the land.
- B.** Applications to convert shall be made under oath on forms prescribed by the commissioner and accompanied by:
- (1) the conversion application filing fee as set forth in the schedule of fees; and
 - (2) a reclamation plan to be implemented in the event the commissioner determines the conversion has been unsuccessful and the converted land should revert to its prior use.
- C.** The commissioner's approval of the application to convert and the issuance of an amended lease may be conditioned upon the lessee's obtaining sufficient surety for the benefit of the state of New Mexico to guarantee the land's restoration in the event of lease default, cancellation, relinquishment or termination for any reason, or the reversion of the land to its prior use.
- D.** Upon conversion, the lessee shall pay to the commissioner an amount equal to the difference between the grazing land rental and the cultivated land rental as determined by the commissioner for the period between the date of conversion and the first following rental payment due date.
- E.** In the event converted land reverts to its prior use, the lessee, at the lessee's own expense, shall restore the land to a stabilized condition through reclamation and revegetation implemented pursuant to the reclamation plan submitted with the application to convert. No reduction in rentals due to the reversion shall be effective until such plan has been implemented to the commissioner's satisfaction.
- [3/11/1981, 4/28/1982, 1/20/1984, 9/30/1985, 12/1/1992, 6/29/1996; 19.2.8.19 NMAC - Rn, 19 NMAC 3 SLO 8.19, 9/30/2002; A, 6/30/2016; A, 6/11/2019]

19.2.8.20 RANGE STEWARDSHIP INCENTIVE PROGRAM:

- A.** Agricultural lessees who have leased state trust lands for grazing purposes for at least five years may apply for a twenty-five percent reduction in agricultural lease rentals by demonstrating through the range stewardship incentive program that they have been good stewards of their leased state trust land. Only state trust

lands leased for grazing purposes and not subject to a sublease shall be eligible for participation in the range stewardship incentive program.

B. State trust lands included in the range stewardship incentive program shall be evaluated and classified by the commissioner according to the range condition and trend.

(1) The commissioner's evaluation and classification shall be based on the commissioner's verification of a sworn range condition and trend analysis and classification recommendation by a disinterested party with training or experience in rangeland evaluation. Said party shall certify that said party personally inspected the lands evaluated, that said party has no interest in or claim against the lands evaluated and that any fee charged for such evaluation is not related to the classification recommendation.

(2) Range condition shall be rated as either excellent, good, fair, or poor depending on the degree of difference between the range site's state of vegetation and the highest natural development of the plant community that could sustain itself under the prevailing climatic and soil conditions for the site.

(3) Range trend shall be rated as either improving, static, or declining depending on the direction of change in range condition over time.

C. Upon request, the commissioner shall provide to interested parties information explaining the range stewardship incentive program, instructions for applying to participate in the program, a description of the procedures necessary to collect the range data required for the commissioner's evaluation and classification of the leased lands, and a list of names and addresses of those who have successfully completed a course in rangeland evaluation offered regularly by New Mexico state university and the state land office and who have made their names and addresses available to the commissioner for distribution to the public.

(1) Applications to participate in the range stewardship incentive program shall be made in the form prescribed by the commissioner, shall contain such information as the commissioner may require, and shall include a sworn range condition and trend analysis and classification recommendation by a disinterested party with experience or training in rangeland evaluation. The analysis and recommendation shall cover all state trust lands leased to the applicant for grazing purposes. No application fee shall apply.

(2) Only lessees of state grazing land under an existing lease may participate in the range stewardship incentive program. Only state lessees who participate in the program, who have leased state trust lands for grazing purposes for at least the immediately preceding five years, and whose leased lands include acreage classified by the commissioner as excellent-improving, excellent-static, good-improving or good-static shall pay the reduced rental.

D. All state trust land leased to the applicant for grazing purposes shall be included in the range stewardship incentive program upon completion of the commissioner's evaluation and classification of the acreage.

(1) Acreage that is classified by the commissioner as either excellent-improving, excellent-static, good-improving or good-static shall qualify for the rental reduction on a per acre basis.

(2) Acreage that is classified by the commissioner as either fair or poor condition or declining trend shall not qualify for the rental reduction but shall be included in the range stewardship incentive program.

E. In order to continue to participate in the range stewardship incentive program and to enjoy any applicable rental reduction, the participating lessee shall provide to the commissioner, no earlier than November 1st and no later than February 1st in the lease year immediately preceding the final year in the lease term, a sworn range condition and trend analysis and classification recommendation on the leased acreage by a disinterested party with training or experience in rangeland evaluation. The commissioner's verification of such analysis and recommendation shall provide the basis for the commissioner's reevaluation and any reclassification of the leased acreage.

(1) The lessee's failure to timely submit such range condition and trend analysis and classification recommendation shall terminate the lessee's participation in the program. Upon the lessee's reapplication and the commissioner's reevaluation and reclassification of the leased grazing lands, however, participation in the program shall again commence.

(2) Upon the lessee's continued participation in the program and the commissioner's reevaluation and reclassification of acreage from fair or poor condition or declining trend to excellent-improving, excellent-static, good-improving or good-static, the rental reduction shall apply to such reclassified acreage on a per acre basis.

(3) Upon the termination of the lessee's participation in the program any rental reduction shall cease to apply. Upon the commissioner's reevaluation and reclassification of excellent-improving, excellent-static, good-improving or good-static acreage to fair or poor condition or declining trend, the rental reduction shall cease to apply to such reclassified acreage.

(4) Upon the transfer or granting of a lease containing reduced rental acreage to one who is not qualified to pay the reduced rental, participation in the range stewardship incentive program may continue but any rental reduction shall cease to apply.

(5) Program participation shall continue and rental reduction shall continue or commence in those instances in which a participating lessee who is qualified to pay the reduced rental obtains a lease on lands included in the range stewardship incentive program that are classified as excellent-improving, excellent-static, good-improving or good-static, including those instances in which the lease is obtained by the lessee's exercise of the preference right or by the lessee's competitive bid.

[12/1/1992, 6/29/1996; 19.2.8.20 NMAC - Rn, 19 NMAC 3 SLO 8.20, 9/30/2002; A, 6/11/2019]

19.2.8.21 SURFACE DAMAGES:

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.

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]

19.2.8.22 [RESERVED]

[19.2.8.22 NMAC - Rn, 19.2.8.21 NMAC, 04/15/10; Repealed, 06/30/16]

HISTORY OF 19.2.8 NMAC:

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

Rule 8, Pertaining to Grazing and Agricultural State Leases, 3-11-81.

SLO Rule 8, Relating to Grazing and Agriculture State Leases, 1-20-84.

SLO Rule 8, Relating to Agricultural Leases, 9-30-85.

SLO Rule 8, Relating to Agricultural Leases, 12-1-92.

History of Repealed Material: [RESERVED]