

STATE LAND OFFICE

Notice of Public Hearing

The New Mexico State Land Office (“SLO”) will hold a public hearing on Friday, May 24, 2019, at 10:00 a.m., and continuing thereafter as necessary, in Morgan Hall, Room 101, 310 Old Santa Fe Trail, Santa Fe, New Mexico. Any change to the location or time will be posted with a final agenda on the SLO webpage (<http://www.nmstatelands.org>) at least 72 hours prior to the date and time specified above.

The purpose of the hearing is to consider proposed amendments to 19.2.8 NMAC, Sections 9 and 11 to revise the requirements for applications to renew an agricultural lease, in recognition of the fact that the annual rental for grazing land leased under an agricultural lease is, in the absence of competitive bid, determined by the formula set forth in Section 11 of the rule. The proposed change would eliminate the requirement that an application for renewal of a grazing lease include an appraisal, which has involved completion of an obsolete and unnecessary “appraisal” form. In addition, the proposed change would provide a process for redetermination of the carrying capacity for grazing land. The proposed changes would be made pursuant to the authority of the commissioner of public lands to prescribe reasonable rules and regulations governing the conduct of all SLO business. Section 19-1-23 NMSA 1978.

The proposed rule changes are available on the SLO website (<http://nmstatelands.org>) and at the SLO building located at 310 Old Santa Fe Trail, Santa Fe, New Mexico. To request a hard copy, contact Alysha Shaw at (505) 827-5761 or ashaw@slo.state.nm.us.

Written comments may be submitted by mail to: Alysha Shaw, New Mexico State Land Office, Attention: Rulemaking Comments, P.O. Box 1148, Santa Fe, New Mexico 87504-1148, or by email to ashaw@slo.state.nm.us. Written comments will be accepted until noon on May 23, 2019.

If you are an individual with a disability and you require assistance or an auxiliary aid (such as a sign language interpreter) to participate in any aspect of this process, please contact Selena Romero by May 17, 2019 at (505) 827-5790 or sromero@slo.state.nm.us.

This is an amendment to 19.2.8 NMAC, Sections 9 and 11, effective 6/11/2019.

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 ~~(4)~~ 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~~;~~ ~~provided, however, that an~~. 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~~ 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 ~~twelve (12)~~ 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 ~~[(4)]~~ 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 ~~[(4)]~~ 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 ~~[is non-conforming to]~~ does not comply with the requirements of this ~~[Subsection]~~ Section 19.2.8.9 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)](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.

~~[(3)](2)~~ In ~~[his]~~ 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]

19.2.8.11 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.

BC. 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 ~~[a third]~~ one-third percent [~~(-333)]~~ of the preceding year's rental for the same land.

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

DE. 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]