

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 2 STATE TRUST LANDS
PART 9 BUSINESS LEASING

19.2.9.1 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.
[19.2.9.1 NMAC - N, 05/15/2001]

19.2.9.2 SCOPE: Pursuant to Article XIII, Section 2, of the New Mexico State Constitution, the commissioner has jurisdiction over all lands and related resources that the United States granted and confirmed to New Mexico under the New Mexico Enabling Act. This rule, 19.2.9 NMAC, governs the granting of business leases for commercial and business leasehold uses, as well as surface uses that are not otherwise provided for under other state land office rules, on those lands within the commissioner's constitutional jurisdiction.
[19.2.9.2 NMAC - N, 05/15/2001]

19.2.9.3 STATUTORY AUTHORITY: N.M. Const. Art. XIII; Section 19-1-1 *et seq.* NMSA 1978; Section 19-7-1 *et seq.* NMSA 1978.
[19.2.9.3 NMAC - N, 05/15/2001]

19.2.9.4 DURATION: Permanent.
[19.2.9.4 NMAC - N, 05/15/2001]

19.2.9.5 EFFECTIVE DATE: May 15, 2001, unless a later date is cited at the end of a section.
[19.2.9.5 NMAC - N, 05/15/2001; A, 06/30/16]

19.2.9.6 OBJECTIVE: The objectives of 19.2.9 NMAC are to obtain revenues from business leasing; to assure protection and maintenance of trust lands; to provide standard lease terms and conditions; and to provide an efficient process for business leasing.
[19.2.9.6 NMAC - N, 05/15/2001]

19.2.9.7 DEFINITIONS: As used in 19.2.9 NMAC, the following terms have the meaning set forth in this section. A business lease may add detail to a definition to accommodate lease specific issues.

A. “Approval” means written approval and includes only that which has been expressly approved and nothing further which might be implied.

B. “Assignment” means any direct or indirect transfer of a lessee's interest in a business lease or improvements, including, but not limited to, any conditional transfer or transfer by operation of law.

C. “Authorized improvements” means improvements which have the approval of the commissioner prior to being placed, developed, created, or constructed on, or obtained or developed for the benefit of, or made appurtenant to trust lands, or which have subsequently received that approval.

D. “Bid lease” means a business lease entered into by the commissioner after the public advertisement and public auction required by the Enabling Act.

E. “Business lease” means a written lease of trust lands issued under this rule, 19.2.9 NMAC, for business, commercial, residential, industrial, or real estate planning and development purposes, or for surface uses that are not otherwise provided for under other state land office rules. The commissioner, in his discretion, shall resolve any uncertainty about whether a lease is a business lease.

F. “Collateral assignment” means the conditional assignment to a creditor as security for a debt of a lessee's personal property interest in a business lease or improvements.

G. “Commissioner” means the commissioner of public lands. The commissioner is the executive officer of the state land office and may delegate to state land office staff the performance of duties required of the commissioner under this rule.

H. “Improvements” means any of the following:

(1) any item of tangible property developed, placed, created or constructed on trust lands including, but not limited to, buildings, roadways, equipment and fixtures;

(2) water rights appurtenant to trust lands, including without limitation any water rights developed or used on trust land for the benefit of the trust land; and,

(3) any tangible or intangible property, rights, approvals or privileges obtained or developed for the benefit of, or made appurtenant to, trust lands that are designated as improvements in a business lease.

I. “Improvement value credit” means a credit granted by the commissioner for permanent improvements which entitles the holder of the credit to certain rights upon the subsequent lease or sale of trust lands as provided in this rule and in a business lease.

J. “Lessee” means the party of record at the state land office, who leases trust land from the commissioner under a business lease.

K. “Mortgage” means the mortgage to a creditor as security for a debt of a lessee’s personal property interest in a business lease or improvements.

L. “Non-bid lease” means a business lease entered into by the commissioner without public advertisement and public auction for a term not to exceed five years, or for a term not to exceed twenty-five years pursuant to Section 19-7-54 or 19-7-55 NMSA 1978.

M. “Permanent improvements” means those authorized improvements that a business lease specifies shall not be removed upon the termination of the lease. “Permanent improvements” shall include water rights appurtenant to trust land and equipment and fixtures necessary for the development of the water.

N. “Removable improvements” means authorized improvements that are not permanent improvements.

O. “Rent” means the total of estimated rent payments, including all periodic rents with applicable rent adjustments, percentage rents, initial or periodic fees, or any other incentive payment due during the lease term, and any other payments identified as rent in a business lease.

P. “Rent adjustment” means a periodic increase of any rent amount.

Q. “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.

R. “State land office” means the New Mexico state land office.

S. “Sublease” means a transaction or arrangement whereby a business lessee transfers to another either the use or possession of all or part of leased trust land, or the management and control of all or part of the improvements located on leased trust land.

T. “Termination” means the end of a business lease whether by cancellation, relinquishment or the expiration of the lease term.

U. “Trust” means the land trust established by the Enabling Act (Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310), and that trust’s assets, which are administered through the state land office by the commissioner.

V. “Trust land” means all land owned by the trust.

W. “Unauthorized improvements” means improvements that have not received the commissioner’s approval.

[19.2.9.7 NMAC - N, 05/15/2001; A, 06/30/16]

19.2.9.8 LEASING STANDARDS:

A. The surface estate of any trust land may be leased under a business lease at the discretion of the commissioner. A business lease may include more than one use, and may encompass more than one parcel of trust land. For lands already under any surface lease, the applicant shall comply with the procedures in 19.2.9.21 NMAC.

B. After receipt of an application as provided in 19.2.9.9 NMAC, the commissioner may request additional information from the applicant, as provided in 19.2.9.10 NMAC, and may enter into negotiations for a non-bid lease.

C. After receipt of an application as provided in 19.2.9.9 NMAC, or on his own initiative, the commissioner may offer to lease trust land under a bid lease as provided in 19.2.9.11 NMAC.

D. Any applicant may withdraw an application for a business lease at any time.

E. Notwithstanding any other provision of 19.2.9 NMAC, and at any time before the execution of a business lease, the commissioner may, at the commissioner’s discretion, reject any application or bid submitted under 19.2.9 NMAC and may withhold from business leasing any trust land subject to the commissioner’s jurisdiction.

[19.2.9.8 NMAC - N, 05/15/2001]

19.2.9.9 APPLICATION TO LEASE: Any person may propose that the commissioner enter into a business lease by submitting an application on forms prescribed by the commissioner.

A. The application shall, at minimum, be made under oath and shall identify the applicant, the trust land proposed for leasing and the proposed uses of the trust land, including any proposed improvements.

B. The application shall include a written appraisal of the trust land proposed for lease made under oath by a disinterested and credible person. All statements contained in such appraisements, except as to the true value of the land appraised, must be based upon personal knowledge and not upon information and belief. No such appraisal shall be conclusive upon the commissioner.

C. The application shall include a nonrefundable application fee in the amount established in the schedule of fees.

[19.2.9.9 NMAC - N, 05/15/2001]

19.2.9.10 SUPPLEMENTAL INFORMATION: After review of an application and before entering into a business lease, the commissioner may require additional information and documentation from an applicant, including, but not limited to, an appraisal of the trust land proposed for lease, a survey of the land, a detailed development plan of the land, environmental analyses of the land, and cultural or biological resource investigations of the land.

[19.2.9.10 NMAC - N, 05/15/2001]

19.2.9.11 BID LEASE: The commissioner may, under the following procedures, offer a bid lease to the highest and best bidder at a public auction held at the county seat of the county where the offered trust land, or the major portion of the offered land, is located.

A. Appraisal. After a preliminary determination that a bid lease might be advantageous to the trust, the commissioner will cause an appraisal to be made. The appraisal will cover the trust land proposed for lease and any permanent improvements on, appurtenant to, or obtained or developed for the benefit of, the land. Thereafter, if the commissioner determines to offer the land for bid lease, a copy of the appraisal will be furnished to the applicant, if any, and to the holder of the improvement value credit as well as to any other interested parties. Prior to the advertisement of the lease sale, the commissioner shall determine that the terms of the bid lease being offered provide a return to the trust over the duration of the bid lease that is a fair rental value based on the appraisal.

B. Advertisement. A notice of the lease sale shall be published once each week for ten (10) consecutive weeks in a newspaper of general circulation published in Santa Fe, and in a newspaper of general circulation published nearest the offered land.

C. Notice. The notice of lease sale shall contain:

- (1) The date, time and place of the auction;
- (2) A description of the trust land offered for lease, and any limitations on the uses of the land including any local land use restrictions, covenants, master plans or any restrictions established by the commissioner;
- (3) A summary of the basic provisions of the bid lease, including the term (and any extension periods), the rent (if fixed and not based on the highest bid) and the allowable uses of the trust land offered for lease;
- (4) Any requirements or qualifications for bidders;
- (5) The amounts that a bidder must deposit to pay the costs of the lease sale, the first rental payment and any improvement value credits;
- (6) A brief description of how the commissioner will determine the highest and best bidder; and
- (7) The name of a person to contact at the state land office for additional information on the auction and the trust land offered for lease.

D. Deposit. To qualify as a bidder, the prospective bidder shall deposit with the commissioner before the auction or at such other time provided in the notice of lease sale, the following amounts which shall be listed in the notice:

- (1) The costs of the lease sale. The successful bidder shall pay the reasonable costs and expenses related to the lease sale, whether incurred by the state land office or by another entity at the request of the state land office. Such costs and expenses may include, but are not limited to, the costs of appraisals, surveys, advertising, land use planning and brokerage or other real estate fees;

- (2) The first rental payment under the bid lease; and

(3) If the offered trust land includes permanent improvements, either a sum equal to the improvement value credit attributable to the permanent improvements or a bill of sale or a waiver of payment signed by the holder of the improvement value credit or a bond sufficient to cover the value of the improvements if an appeal of the appraised value is to be taken, unless the prospective bidder is the holder of the improvement value credit. The improvement value credit shall be calculated and paid as provided in 19.2.9.18 NMAC. Upon completion of the lease sale, the commissioner shall return any deposits from unsuccessful bidders.

E. Qualification of bidders. The commissioner may establish additional qualifications for bidders based on the nature of the bid lease and the proposed uses of the offered trust land.

F. Due diligence. All bidders must undertake their own due diligence in preparation for the lease sale, including, but not limited to, inspecting the offered trust land and reviewing pertinent records and files of the state land office and other public agencies. A prospective bidder must obtain the approval of the commissioner before entering on trust land. The notice of lease sale may provide that additional information concerning the offered trust land is available at the state land office for viewing by any interested parties. The additional information may include, without limitation, a draft bid lease or a summary of bid lease provisions.

G. Auction. The auction may be conducted by oral auction or by the acceptance of sealed bids or proposals at the time of the auction. If awarded at all, the bid lease shall be awarded to the highest and best bidder.

H. Highest and best bidder. In determining the highest and best bidder, the commissioner shall establish criteria that will be described in the notice of lease sale. The criteria shall enable the commissioner to select the bid that is in the best interests of the trust considering the requirements of the bid lease and the proposed uses of the offered trust land. In addition to any offered bonus or rental amounts, the commissioner may, as appropriate, consider the qualifications of the bidders to develop the land or to construct the improvements contemplated by the proposed bid lease, and to provide the trust with sustainable long-term returns. The commissioner may divide the bid process into stages, and review the qualifications of bidders prior to, or in addition to, reviewing any financial proposals.

I. Execution of bid lease. The successful bidder must deposit with the commissioner all amounts due for the lease sale, including any bonus bid, no later than five business days after the auction, and shall, within thirty days after the auction, enter into the bid lease. The commissioner may extend the period for entering into a bid lease to no greater than one hundred twenty days after the auction. The final bid lease shall not contain any provisions that vary from those described in the notice of lease sale. If the successful bidder does not deposit with the commissioner any amounts due, or enter into the bid lease offered by the commissioner, within the prescribed time periods, the commissioner may reject the bid and either declare another bidder to be the highest and best, or terminate the lease sale.

[19.2.9.11 NMAC - N, 05/15/2001]

19.2.9.12 BUSINESS LEASE:

A. Prerequisites. Before taking possession of the leased trust land, the lessee must provide the commissioner with a legal description and a survey plat showing the exact location of the land.

(1) A legal description must be given in aliquot parts of at least forty (40) acres, or in some other form as may be required by the commissioner such as survey metes and bounds. The description shall include a reference to all encumbrances, easements, or other servitudes burdening or benefiting the trust land.

(2) The commissioner may provide specific instructions on the requirements for a survey plat.

B. Leases. All business leases shall be in a form and contain such provisions as may be prescribed by the commissioner from time to time, which provisions shall be deemed to include all pertinent statutes and state land office rules in effect at the time of lease issuance.

C. Conditions. The commissioner shall establish conditions in a business lease necessary for providing a secure return to the trust, managing the trust land in a commercially reasonable manner and protecting the trust land and any natural and cultural resources on the trust land from waste. Each lessee under a business lease shall have an affirmative duty to diligently prevent and protect against trespass and waste on trust land.

D. Uses. A business lease shall designate the allowable uses of the leased trust land. A business lease may be issued for any use of the surface estate not otherwise provided for under other state land office rules.

(1) The commissioner may establish restrictions on the uses of the trust land, including restrictions contained in local land use rules, covenants or land use plans.

(2) A business lease may be issued to authorize the planning of trust land or the development of trust land pursuant to an approved plan. The lease may require that the lessee obtain local

government approvals of the land use plan prior to development. The lease may provide for development to occur in phases, which phases may require further leases or sales of trust land.

E. Rent. Unless otherwise provided in a lease, rent shall be paid in advance in annual installments.

(1) If a business lease has a term of more than five years, the lease shall provide for a rent adjustment of any fixed periodic rent to occur no less often than every five years.

(2) As provided in Section 19-7-34 NMSA 1978, the commissioner shall have a first lien on any improvements on the leased trust land, prior and superior to any other lien or encumbrance, whether created with or without notice of the lien, for rental due or to become due. When any rental is due and unpaid the commissioner may attach all improvements or a portion of the improvements sufficient to pay the unpaid rental together with all costs incurred in the enforcement of the lien.

(3) The commissioner may, upon request and upon provision of adequate security as determined by the commissioner, agree to withhold enforcement of the rental lien. Adequate security may include prepayment of lease rent or some other acceptable form of financial assurance.

F. Mineral reservation. Each business lease shall reserve the mineral estate of the trust land to the commissioner and shall reserve the right to lease the mineral estate, or any portion of the mineral estate, for exploration, development, conservation and production of the mineral resources, including oil and natural gas. The reservation shall include all rights of access over, through or across trust lands necessary for a mineral lease. The commissioner may, in a business lease, agree, upon payment of an additional annual rent, not to exercise the right to lease the trust's mineral rights during the term of the lease. The additional rent shall be sufficient to compensate the trust based on the commissioner's evaluation of the potential mineral value associated with the leased trust land.

G. Easements and right of way. Each business lease shall reserve to the commissioner the right to grant easements and right of way across trust land for any legal purpose. A business lease may provide that any easements or right of way granted across leased trust land shall be located to avoid unreasonable interference with the uses allowed under the lease. A business lease may require that the lessee acquire from the commissioner easements or right of way necessary for the development of the trust lands and may also require or allow the lessee to assign or dedicate its interest in easements or right of way to a public entity.

[19.2.9.12 NMAC - N, 05/15/2001]

19.2.9.13 LEASE EXTENSION AND NEW LEASE:

A. Bid lease. The term of a bid lease may not be extended except as provided in the notice of lease sale and the original bid lease.

B. Non-bid lease. The term of a non-bid lease may not be extended. If, prior to the expiration of a non-bid lease, the lessee wants a new non-bid lease, for the same trust land and the same use, that will commence at the expiration of the current lease, and if the lessee has complied with all the terms of its lease, the lessee shall submit a sworn application, on such forms as the commissioner may require or provide, for a new lease. The commissioner may establish, in a business lease, additional requirements for applying for a new lease.

C. Discretion. Nothing in this rule shall limit the discretion of the commissioner, at the expiration of a business lease, to determine whether it is in the best interests of the trust to reject all applications to lease, or to offer a new non-bid lease on such terms as the commissioner determines or to sell or lease the trust land through a bid process.

[19.2.9.13 NMAC - N, 05/15/2001]

19.2.9.14 SUBLEASE AND ASSIGNMENT:

A. Any assignment or sublease for use of trust lands is void without the approval of the commissioner. The commissioner's approval may be conditioned upon such terms or requirements as are deemed to be in the best interests of the trust. The commissioner may, in a lease, pre-approve certain assignments or subleases that he deems to be in the best interests of the trust.

(1) No assignment or sublease of trust lands under a business lease shall be approved unless the lessee is in compliance with the terms of the lease.

(2) The commissioner's approval of a sublease or assignment shall not relieve the lessee from any liability that may have arisen before the sublease or assignment. The commissioner's approval of a sublease shall not release the lessee from its continuing and primary liability for performance of all terms and obligations under the lease.

(3) The commissioner's approval of a sublease or assignment will not constitute approval of any subsequent sublease or assignment.

B. Applications to sublease or assign shall be made by the current lessee under oath, on forms prescribed by the commissioner, and shall be accompanied by the fees shown on the schedule of fees.

C. No assignment or sublease shall extend the term of a business lease and the lessee shall inform its sublessee or assignee of the terms and conditions of the lessee's business lease.

D. The termination of a business lease shall automatically, and without notice, terminate any sublease, unless otherwise agreed to in writing by the commissioner.

E. A lessee or sublessee may not transfer, change the purpose or use, or move the point of diversion of any water rights that are appurtenant to trust land without the prior approval of the commissioner.

[19.2.9.14 NMAC - N, 05/15/2001]

19.2.9.15 COLLATERAL ASSIGNMENTS AND MORTGAGES:

A. Unless otherwise provided in a business lease, and subject to the prior approval of the commissioner, a lessee's interest in a business lease or improvements may be collaterally assigned or mortgaged by the lessee. An approved collateral assignee or mortgagee shall have a lien on the lessee's interest in the lease, as well as any improvements covered by the collateral assignment or mortgage, but shall not have a lien on the commissioner's interest in the lease and any improvements, or in the commissioner's reversionary interest in the real and personal property subject to the lease. Any attempt to collaterally assign or mortgage a lessee's interest in a business lease, or in any improvements, without the approval of the commissioner, shall be void and shall not vest the purported collateral assignee or mortgagee with any right, title, interest, claim or privilege with respect to such lease or improvements.

(1) A lessee shall apply to the commissioner to collaterally assign or mortgage the lessee's interest in a business lease or any improvements in writing, under oath, and on such form as may be prescribed by the commissioner. The lessee shall include a copy of the proposed collateral assignment agreement or mortgage and pay any applicable fees set out in the schedule of fees.

(2) The commissioner may approve the collateral assignment or mortgage subject to such terms and conditions which he deems to be in the best interests of the trust.

B. If the commissioner gives written notice to a business lessee of a breach of the lease by the lessee, the commissioner shall also give written notice of the breach to an approved collateral assignee or mortgagee of the business lessee. Such notice shall be sent by certified mail to the most current name and address of the collateral assignee or mortgagee provided to the commissioner and no proof of receipt of such notice by the collateral assignee or mortgagee shall be required.

C. An approved collateral assignee or mortgagee shall have the right to cure a lessee's breach within the time periods provided to the lessee under the lease. A business lease may provide that a collateral assignee or mortgagee may succeed to the rights and duties of the lessee of the business lease under such conditions as are provided in the lease. The commissioner's approval of a collateral assignment or mortgage of improvements does not change the status of any improvements as authorized, unauthorized, removable or permanent improvements.

D. A collateral assignee or mortgagee shall take its interest subject to the following terms and conditions, and the lessee is required to give notice of such terms and conditions to its collateral assignee or mortgagee upon making a collateral assignment or mortgage.

(1) The commissioner is entitled to notice of all proceedings, judicial or non-judicial, to enforce or foreclose the collateral assignment or mortgage.

(2) Any successor in interest to a lessee's interest in a business lease, or in any improvements, that acquires an interest in such property as the result of the enforcement or foreclosure of a collateral assignment or mortgage, or an assignment or conveyance in lieu of such enforcement or foreclosure, shall be deemed to be an assignee under section 19.2.9.14 NMAC, and will be subject to the approval of the commissioner. Such approval will not be unreasonably withheld; but no successor in interest will be approved by the commissioner unless all sums due under the terms of the lease have been paid in full, and all other pending duties discharged, or unless arrangements satisfactory to the commissioner are made to fully pay such sums or discharge such duties.

[19.2.9.15 NMAC - N, 05/15/2001]

19.2.9.16 APPROVAL OF IMPROVEMENTS: No improvements shall be placed, developed, created or constructed on trust land, or obtained or developed for the benefit of trust land, or made appurtenant to trust land without the prior approval of the commissioner. Such approval may be conditioned upon certain requirements

imposed by the commissioner which may include, without limitation, the provision of a bond or other adequate security to assure proper removal of improvements from trust land and the restoration of trust land.

A. A request for the commissioner's approval shall be made in writing on such forms and in such manner as may be required by the commissioner, and shall be accompanied by the fee set forth in the schedule of fees. The commissioner shall not be obligated to approve any improvements.

B. A business lease may identify existing and proposed improvements that are approved by the commissioner when he determines it is in the best interests of the trust.

C. If the commissioner does not grant prior approval for improvements, the commissioner may, in the best interests of the trust, approve improvements after the improvements have been placed, developed, created or constructed on, obtained or developed for the benefit of, or made appurtenant to trust land.

[19.2.9.16 NMAC - N, 05/15/2001]

19.2.9.17 REMOVAL OF IMPROVEMENTS:

A. Upon the termination of a business lease, all removable or unauthorized improvements shall be removed from the trust land unless otherwise provided in the lease or in writing by the commissioner.

(1) No improvement may be removed without the commissioner's approval if a lessee owes rent or any other sums to the commissioner or if any material duties required under the lease remain unperformed.

(2) The commissioner may require, in writing, that designated unauthorized improvements be left in place. Such improvements shall become the property of the commissioner and no person shall be entitled to any improvement value credit for such improvements.

(3) Any improvements left on trust lands without the commissioner's approval shall remain the property and liability of the lessee and shall constitute a nuisance until removed or abandoned. The commissioner may elect to either take any necessary action to abate such nuisance, with all costs and fees incurred in so doing to be additional rent due from the lessee under the lease, or to declare that the improvements are abandoned and have become the property of the commissioner.

B. In all cases where improvements are removed from trust land, the lessee shall be solely liable for the restoration of the trust land to its condition prior to the placement of such improvements. The lessee's obligation to remove improvements and to restore the trust land shall survive the termination of the lease.

C. All costs, fines and fees incurred by the commissioner as a result of improvements left on trust lands without the commissioner's approval, and all costs, fines and fees incurred as a result of damage or waste to trust lands and their improvements during the term of the lease, or arising from or in connection with the lessee's use and occupancy of the trust lands, shall remain the sole liability of the lessee and shall be deemed additional rent due at the time incurred.

[19.2.9.17 NMAC - N, 05/15/2001]

19.2.9.18 IMPROVEMENT VALUE CREDIT:

A. Personal property. Unless otherwise provided in a business lease or in this rule, improvements shall be the property of the lessee. The interest of a lessee in a business lease and in the improvements is a personal property interest. Unless otherwise provided in a business lease, improvement value credit is only granted for permanent improvements and is not granted for removable or unauthorized improvements. Water rights that are appurtenant to trust land shall be developed and held in the name of the commissioner.

B. When payable. When trust lands are sold or leased to a person other than the holder of any improvement value credit, the successor in interest shall pay to the commissioner the amount of the improvement value credit, if any. The commissioner shall pay to the holder of the improvement value credit the amount paid by the successor in interest, less any rent, costs or damages owed to the commissioner.

(1) In lieu of such payment, a successor in interest may file with the commissioner a bill of sale or waiver of payment signed by the holder of the improvement value credit or, if an appeal of the appraised value is taken, a bond sufficient to cover the value of the improvements as determined by the commissioner.

(2) Except for the transfer of funds for improvement value credit paid by a successor in interest as provided in this subsection, the commissioner shall not be liable for the payment of any improvement value credits. The commissioner may require a release or indemnity from the party receiving payment of the improvement value credit.

(3) The holder of the improvement value credit must be identified in the records of the state land office. Unless otherwise provided in a lease or in an assignment, collateral assignment or mortgage of improvements approved by the commissioner and filed with the state land office, the commissioner shall treat the

former lessee as the holder of the improvement value credit and the party entitled to payment of any improvement value credit.

C. Calculation of improvement value credit. Unless otherwise provided in a lease, the holder of the credit is entitled to all of the improvement value credit attributable to the permanent improvement.

(1) A business lease may provide that the commissioner shall receive a specified portion of the improvement value credit attributable to a permanent improvement.

(2) Unless otherwise provided in a lease or in a statute, the improvement value credit will be the amount, if any, which the permanent improvement adds to the value of the trust land. The added value shall be determined, at the expense of the lessee or the holder of the credit, by an appraisal conducted by a certified real estate appraiser. The appraisal shall be submitted to the commissioner for review and approval. The commissioner may obtain further appraisals to ascertain the improvement value. The commissioner may require a successor in interest to reimburse the costs of appraising the improvements.

(3) The commissioner shall determine the value of the improvements and his determination shall be final unless the holder of the improvement value credit initiates a contest as provided under Section 19-7-64 NMSA 1978.

(4) A business lease may provide that an improvement value credit may be lost or depreciated if, after termination of the business lease, there is no successor in interest other than the commissioner. [19.2.9.18 NMAC - N, 05/15/2001]

19.2.9.19 RELINQUISHMENT:

A. A lessee may, with the approval of the commissioner, relinquish to the commissioner the lessee's interest in a business lease. The commissioner may, in a business lease, establish conditions pursuant to which the lessee may, at prescribed times, relinquish all or portions of the lease.

B. A lessee may request relinquishment of the lease on forms prescribed by the commissioner and upon payment of a relinquishment fee, provided that:

(1) the lessee is in compliance with the terms of the lease; and,

(2) all improvements made pursuant to the lease on, for, or appurtenant to the lands leased

have been approved by the commissioner and arrangements satisfactory to the commissioner have been made for either the removal or the retention of the improvements.

C. A lessee shall not, by relinquishment, avoid or be released from any liability for known or unknown waste or damage to trust lands, including but not limited to environmental damage, arising from or connected with lessee's use or occupancy of trust lands.

D. A relinquishment shall not be valid or effective until approved by the commissioner. Any attempted relinquishment of the lease, without the commissioner's approval, shall be a breach of the lease.

E. Upon relinquishment, a lessee shall not be entitled to the refund of any rent previously paid; however, a lessee seeking relinquishment in response to a request by the commissioner shall not be charged a fee, and shall be entitled to a pro-rata refund of prepaid rent to be paid only by the successor lessee, purchaser or other successor in interest, if any.

[19.2.9.19 NMAC - N, 05/15/2001]

19.2.9.20 DEFAULT; REMEDIES: Unless otherwise provided in a business lease, a lessee shall be in default under a business lease if a breach of the lease is not cured within thirty days after the commissioner gives written notice of the breach to the lessee. A breach of the lease may include, without limitation, a failure to pay any rent or other monetary obligation due under the lease, or a violation of any term, condition, or covenant of the lease, or the failure to perform or observe any other obligation of the lessee under the lease.

A. Notice. Written notice of a breach shall be sent to the lessee, and to the holder of any collateral assignment or mortgage, at their addresses of record at the state land office, by certified mail. The commissioner need only provide proof of mailing to establish satisfactory compliance with this notice requirement.

B. Remedies. On the default of a lessee, the commissioner shall have all the remedies available to the commissioner at law or in equity in New Mexico, and as provided in the business lease, including, without limitation, terminating the lease, retaking possession of the leased trust land with or without termination of the lease, and proceeding to recover any damages, including damages for any unpaid or unperformed obligations of the lessee.

[19.2.9.20 NMAC - N, 05/15/2001]

19.2.9.21 EXISTING LEASES: Except as provided in this section, the commissioner may not lease under a business lease any trust land currently leased under an existing surface lease unless the existing lessee relinquishes

his interest in the trust land or the commissioner exercises any right of withdrawal of land which the commissioner may have. Notwithstanding the foregoing, the commissioner may determine that a proposed business lease will not unreasonably interfere with the authorized uses under an existing lease, and may allow a new business lease in compliance with the following requirements.

A. The new business lease shall identify the existing lease, shall state that the new business lessee's rights and privileges are subject to the existing lessee's rights and privileges under the existing lease, unless waived or amended, and shall provide that the new business lessee will not interfere with the uses permitted under the existing lease.

B. The existing lessee must consent in writing to the new business lease.
[19.2.9.21 NMAC - N, 05/15/2001]

HISTORY of 19.2.9 NMAC:

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

CPL 69-5, Rules and Regulations Concerning the Sale, Lease and other Disposition of State Trust Lands, 09-02-69.

CPL 71-2, Rules and Regulations Concerning the Sale, Lease and other Disposition of State Trust Lands, 12/16/71.

CPL 77-1, Rules and Regulations Concerning the Sale, Lease and other Disposition of NM Trust Lands, 01/07/77.

Rule 9, Relating To Business Leases On State Lands, 03/11/81

SLO Rule 9, Relating To Business Leases On State Lands, 01/20/84

SLO Rule 9, Relating To Business Leases On State Lands, 06/24/85.

History of Repealed Material:

SLO Rule 9, Relating To Business Leases On State Lands - Repealed, 05/15/2001.