

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 2 STATE TRUST LANDS
PART 100 RELATING TO OIL AND GAS LEASES

19.2.100.1 ISSUING AGENCY: Commissioner of Public Lands, New Mexico State Land Office, P.O. Box 1148, Santa Fe, New Mexico 87504-1148.

[19.2.100.1 NMAC - Rp, 19.2.100.1 NMAC, 6/30/2016]

19.2.100.2 SCOPE: This rule pertains to all oil and gas leases on those lands held in trust by the commissioner of public lands under the terms of the Enabling Act and subsequent legislation (trust lands).

[19.2.100.2 NMAC - Rp, 19.2.100.2 NMAC, 6/30/2016]

19.2.100.3 STATUTORY AUTHORITY: The commissioner's authority to manage trust lands is found in Article 13 of the constitution of New Mexico, and in Section 19-1-1 NMSA 1978. The commissioner's authority to promulgate this rule is found in Section 19-1-2 NMSA 1978. The commissioner's authority over lessees and leases for the exploration, development and production of oil and natural gas on trust lands is found in Sections 19-10-1 *et seq* NMSA 1978.

[19.2.100.3 NMAC - Rp, 19.2.100.3 NMAC, 6/30/2016]

19.2.100.4 DURATION: Permanent.

[19.2.100.4 NMAC - Rp, 19.2.100.4 NMAC, 6/30/2016]

19.2.100.5 EFFECTIVE DATE: June 30, 2016, unless a later date is cited at the end of a section.

[19.2.100.5 NMAC - Rp, 19.2.100.5 NMAC, 6/30/2016]

19.2.100.6 OBJECTIVE: The objective of 19.2.100 NMAC is to provide for the orderly and lawful administration, and the appropriate exploration, development and production, of oil and natural gas on trust lands.

[19.2.100.6 NMAC - Rp, 19.2.100.6 NMAC, 6/30/2016]

19.2.100.7 DEFINITIONS: "Schedule of fees" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

[19.2.100.7 NMAC - Rp, 19.2.100.7 NMAC, 6/30/2016]

19.2.100.8 PRODUCTS INCLUDED: The commissioner is authorized to execute and issue oil and gas leases covering state common school and institutional trust lands as lessor in the name of the state of New Mexico. The form of basic lease is statutory and includes carbon dioxide. All leases issued after June 9, 1963, include helium. Leases issued on or before June 9, 1963, do not include helium gas unless stipulated as provided in 19.2.100.55 NMAC. All forms are provided by the land office.

[19.2.100.8 NMAC - Rp, 19.2.100.8 NMAC, 6/30/2016]

19.2.100.9 CLASSIFICATION INTO DISTRICTS: There are two types of districts, known respectively as restricted districts and non or unrestricted districts. A restricted district comprises an area usually in a proven oil and gas area and is created by statute or by authority of the commissioner. A non- or unrestricted district includes all lands outside the exterior boundaries of restricted districts.

[19.2.100.9 NMAC - Rp, 19.2.100.9 NMAC, 6/30/2016]

19.2.100.10 LANDS SUBJECT TO LEASE: All state lands presently open for oil and gas lease purposes, or lands which may become open in the future due to the cancellation or expiration of leases, or for any other reason, may be leased only by competitive bid after public notice in accordance with 19.2.100.25 NMAC hereof, except as provided in 19.2.100.12 NMAC.

[19.2.100.10 NMAC - Rp, 19.2.100.10 NMAC, 6/30/2016]

19.2.100.11 RESTRICTED DISTRICTS - LEASING:

A. All lands within a restricted district are classified as restricted lands and no tract of such lands shall be leased without being further categorized by the commissioner as either regular or premium based upon five factors: oil and gas trends; oil and gas traps; reservoir volume and recovery rating; lease bonus rating; and exploration and activity. A percentage of zero percent to twenty percent shall be allocated to each factor. In allocating percentages, the following procedures and criteria shall be used:

(1) Oil and gas trends, i.e., where depositional and structural conditions are favorable for accumulation of oil and gas, shall be determined as accurately as possible by the commissioner upon the advice of a qualified geologist using drilling patterns, geological society data, well records and logs, available seismic surface and subsurface geological information and structural maps;

(2) The likelihood of locating structural or stratigraphic oil and gas traps necessary for the accumulation of oil or gas in commercial quantities shall be determined by the commissioner upon the advice of a qualified geologist and a petroleum engineer based upon available seismic and geological data;

(3) Reservoir volume and recovery rating shall be determined considering the nearest known reservoir conditions which may be reasonably assumed to be applicable. Known porosity, permeability, water saturation, pressures and recovery factors shall be included when available and shall be utilized by a qualified petroleum engineer in recommending a reservoir volume and recovery rating;

(4) Lease bonus rating shall be based upon all available recent leasing data which may be reasonably assumed to be applicable. In the absence of sufficient recent leasing data, drilling patterns, geological trends, available seismic data and known or reasonably assumed structural features may be considered in determining the lease bonus rating; and

(5) Exploration and drilling activity shall be determined considering all available information which may include drilling patterns, approved drilling permits, progress reports of drilling wells, workover notices and other information which may be reasonably assumed to be applicable.

B. If the total percentage of all factors for a tract of land is less than seventy-five percent, the tract shall be categorized as regular. If the total percentage of all factors for a tract of land is seventy-five percent or more, the tract shall be categorized as premium.

[19.2.100.11 NMAC - Rp, 19.2.100.11 NMAC, 6/30/2016]

19.2.100.12 UNRESTRICTED DISTRICTS: Lands in an unrestricted district are ordinarily leased by offering them for sale at public auction to the highest and best bidder, as hereinafter explained and in accordance with 19.2.100.25 NMAC *et seq.* However, such lands may be leased on application without bidding if, in the opinion of the commissioner, the best interests of the trust will be served by so doing.

[19.2.100.12 NMAC - Rp, 19.2.100.12 NMAC, 6/30/2016]

19.2.100.13 TERM AND FORM OF LEASES: The commissioner shall issue oil and gas leases upon one of three statutory forms as follows, the form and royalty rate to be specified in the regular notice of public lease sale:

A. For lands classified as non-restricted lands under Section 19-10-3 NMSA 1978 and 19.2.100.9 NMAC, the commissioner shall use the exploratory lease form as set forth in Section 19-10-4.1 NMSA 1978.

B. For lands classified as restricted lands and categorized as regular under Section 19-10-3 NMSA 1978 and 19.2.100.11 NMAC, the commissioner, in the commissioner's discretion, may use the exploratory lease form as set forth in Section 19-10-4.1 NMSA 1978 or the discovery lease form as set forth in Section 19-10-4.2 NMSA 1978.

C. For lands classified as restricted lands and categorized as premium under Section 19-10-3 NMSA 1978 and 19.2.100.11 NMAC, the commissioner, in the commissioner's discretion, may use the exploratory lease form as set forth in Section 19-10-4.1 NMSA 1978, the discovery lease form as set forth in Section 19-10-4.2 NMSA 1978 or the development lease form as set forth in Section 19-10-4.3 NMSA 1978; provided, that in using the development lease form for a tract receiving less than 90 total percentage points under Section 19-10-3 NMSA 1978 and 19.2.100.11 NMAC, the royalty rate shall not exceed three-sixteenths.

[19.2.100.13 NMAC - Rp, 19.2.100.13 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.14 ANNUAL RENTAL - PRIMARY AND SECONDARY TERM: All leases issued by the commissioner shall provide for an annual rental to be paid by the lessee, whether or not a lease is producing oil or gas. The initial rental shall be fixed by the commissioner, but in no case shall the initial amount be less than twenty-five cents (\$0.25) nor more than one dollar (\$1.00) per acre. For ten-year leases, if production in paying quantities is obtained during the primary term of the first five years, then the initial rental rate shall be applicable as long as the lease is held by such production. If no production in paying quantities is obtained during the primary term and the

lease enters the secondary term of five years, the rental for the remaining life of the lease shall be either double that of the primary term or the highest rate of rental prevailing in the area at the commencement of the secondary term, whichever is higher.

[19.2.100.14 NMAC - Rp, 19.2.100.14 NMAC, 6/30/2016]

19.2.100.15 MINIMUM CHARGE: The minimum initial charge for any lease shall be one hundred dollars (\$100.00) or the minimum rental rate, whichever is greater, plus the application fee as set forth in the schedule of fees. Minimum rental rate is computed by multiplying the rental rate by the acreage in each advertised tract.

[19.2.100.15 NMAC - Rp, 19.2.100.15 NMAC, 6/30/2016]

19.2.100.16 LIMITATION OF ACREAGE: Unless otherwise approved and granted by the commissioner, no oil and gas lease shall be issued to cover more than the total number of acres of two sections of land to be wholly or partially included in the lease, regardless of the number of acres within those sections, provided that the lease may incorporate lands within more than two different sections of land.

[19.2.100.16 NMAC - Rp, 19.2.100.16 NMAC, 6/30/2016]

19.2.100.17 DIFFERENT RENTAL DISTRICTS - HIGHEST RENTAL PREVAILING: Where part of the lands in any lease are situated in one rental district and part thereof in another, or other districts, the lessee shall pay the rental prevailing in the district wherein part of the lands affected are situated having the highest rental.

[19.2.100.17 NMAC - Rp, 19.2.100.17 NMAC, 6/30/2016]

19.2.100.18 [RESERVED]

[19.2.100.18 NMAC - Rp, 19.2.100.18, 6/30/2016]

19.2.100.19 CLEAR-LIST OF LANDS FROM UNITED STATES ESSENTIAL BEFORE ISSUANCE OF LEASE: Ordinarily, leases will not be issued for selected lands which have not been clear-listed or for any lands where the records of the state land office show the title of the state to be in question, controversy or dispute.

[19.2.100.19 NMAC - Rp, 19.2.100.19 NMAC, 6/30/2016]

19.2.100.20 LIMITATION TO NOT MORE THAN TWO PERSONS OR LEGAL ENTITIES - TRUST LIMITATIONS - WAIVERS: As a matter of administration and without affecting property rights in oil and gas leases, whenever more than two persons or legal entities apply for the issuance of an oil and gas lease, the commissioner shall grant the lease in the names of no more than two persons acting as attorneys-in-fact for all potential interest owners. In the case of a trust, the trust must be express and a copy of the creating document filed with the commissioner. If more than two trustees are named, a lease shall be granted in the names of no more than two trustees acting as attorneys-in-fact for all trustees. The limitations in this rule may be waived by the commissioner for good cause.

[19.2.100.20 NMAC - Rp, 19.2.100.20 NMAC, 6/30/2016]

19.2.100.21 LEASE WITHIN 25 MILES SQUARE - RIGHT OF COMMISSIONER: No one lease may be issued for lands which will not fall within the area of a square twenty-five miles long by twenty-five miles wide; however, this requirement may be waived by the commissioner in any proper case.

[19.2.100.21 NMAC - Rp, 19.2.100.21 NMAC, 6/30/2016]

19.2.100.22 LIMITATION TO NOT MORE THAN ONE BENEFICIARY INSTITUTION: Leases will not be issued covering lands belonging to more than one beneficiary institution.

[19.2.100.22 NMAC - Rp, 19.2.100.22 NMAC, 6/30/2016]

19.2.100.23 FINANCIAL ASSURANCE:

A. Minimum financial assurance requirements.

(1) Prior to the development, use, or occupation of any lease acreage that is state-owned surface, an oil and gas lessee shall execute and file with the commissioner good and sufficient bond or acceptable alternative form of financial assurance ("financial assurance") in an amount to be fixed by the commissioner but not less than \$150,000 per lease, except as otherwise set forth under this Part, in favor of the commissioner and state land office for the benefit of the applicable trust beneficiary and surface lessees of the affected acreage and their respective grantees or successors in interest, to protect the commissioner and state land office against damage to

state trust land, and to ensure the lessee's compliance with all lease obligations. Damage to state trust land includes, but is not limited to, the failure to plug inactive wells located on the lease acreage; remediate spills and releases of hydrocarbons, produced water, or other contaminants; and reclaim surface disturbance.

(2) A lessee of a mineral-only lease (a lease where the surface is owned by another party) may execute and file with the commissioner minimum financial assurance in an amount to be fixed by the commissioner but not less than \$100,000 per lease.

(3) In the event the commissioner executes a deed or contract for the sale of state trust land whose acreage is encompassed by one or more active oil and gas leases, each oil and gas lessee or well operator shall file a good and sufficient bond, in an amount to be fixed by the commissioner, but not less than \$2,000 per lease, on behalf of the purchaser to secure the payment for such damage to the livestock, range, water, crops or tangible improvements on such lands as may be caused by operations under the oil and gas lease; provided that if the purchaser shall file with the commissioner a duly executed and acknowledged waiver of the purchaser's right to require such a bond, the development, occupation, and use of the lands by the oil and gas lessee may be permitted without the deed/purchaser bond.

B. Heightened financial assurance requirements.

(1) The commissioner may require the lessee to file heightened financial assurance, in an amount to be determined by the commissioner not to exceed one-hundred percent of estimated applicable plugging, remediation, and reclamation costs, if a lease includes on its premises any of the following conditions:

(a) an inactive well (a well for which no production or injection has been reported for a continuous period of one year or more), except for a well:

(i) that is in approved temporary abandonment status and has been in such status with the New Mexico oil conservation division for a period of five years or less, but this exception shall not apply to any lessee or well operator which has ten percent or more of all wells it operates on state trust lands in approved temporary abandonment status; or

(ii) that has received an approved shut-in or extension from the commissioner or that is located on a lease which has received an approved shut-in from the commissioner.

(b) a production well that has produced less than 1,000 barrels of oil or the equivalent volume of gas, or a disposal well that has injected less than 5,000 barrels in the preceding 12 months;

(c) a spill or release of hydrocarbons, produced water, or other contaminants whether or not reported to the oil conservation division, that has not been completely remediated pursuant to both state land office and oil conservation division rules and requirements within the latter of one year of occurrence or discovery, or one year from the effective date of this Part;

(d) a pattern of repeated spills or releases of hydrocarbons, produced water, or other contaminants on the lease premises or on the lessee's other state oil and gas lease; or

(e) the lessee has failed to file an annual report or certification of no change for the prior year or other prior years.

(2) If any of the following conditions have occurred in the past 10 years, the commissioner may require the lessee to file a heightened financial assurance, in an amount to be determined by the commissioner not to exceed one-hundred percent of estimated applicable plugging, remediation, and reclamation costs:

(a) the commissioner or another government agency has claimed the lessee's financial assurance filed with the commissioner or such other government agency to redress the lessee's compliance deficiencies related to operations in New Mexico;

(b) the commissioner has filed suit against the lessee for failing to remedy damage to state trust land caused by oil and gas operations on a lease held by the lessee; or

(c) the lessee is out of compliance with an agreed compliance order, stipulated final order, other final order of the oil conservation division, a final order of another agency of the state or the United States or a court order or settlement agreement from a legal proceeding involving the state land office, oil conservation division, or another state or united states agency, that pertains to environmental damage caused by lessee's oil and gas operations in New Mexico.

(3) A lessee may submit written documentation showing that the conditions that trigger the heightened financial assurance requirement are being diligently addressed. In the commissioner's sole discretion, the commissioner may defer the heightened financial assurance requirement for a period of up to 180 days upon determining that there are sufficient efforts being taken to plug wells, remediate spills or releases of hydrocarbons, produced water, or other contaminants, or to address other conditions that trigger the heightened financial assurance requirement by a date agreeable to the commissioner. The deferment may be extended in the commissioner's sole

discretion based on the lessee's progress addressing the compliance deficiencies, provided that any subsequent deferment period shall not exceed 90 days.

(4) In addition to the heightened financial assurance factors identified in Paragraphs (1) and (2) of Subsection B, the commissioner may require a heightened level of financial assurance on an individual lease basis, based on the commissioner's assessment of other factors pertinent to the lessee's oil and gas operations in New Mexico, including the number of wells on a given lease, the environmental condition or compliance status of the lease premises or other oil and gas operations in the state, or significant changes in compliance costs.

(5) In the event a heightened level of financial assurance is required under any provision of this Part, the commissioner will provide written notice to the address, associated with the oil and gas lease on file with the oil, gas, and mineral division of the state land office, by certified mail or courier to the lessee of the required amount and the reasons for the heightened financial assurance requirement. The lessee shall have 90 days from the date of the mailing to update its financial assurance; except that in instances where the commissioner requires a heightened level of financial assurance because the commissioner has been paid on a claim against the lessee's prior financial assurance, or because the commissioner has filed a claim against the lessee's prior financial assurance and the surety, bank, or other third party issuing the financial assurance has refused to honor the commissioner's claim, the lessee shall have 30 days.

(6) Leases subject to heightened financial assurance requirements may be subject to additional reporting requirements, including, but not limited to, an estimation of asset retirement obligations for wells and associated infrastructure located on such leases.

(7) A list of leases subject to heightened financial assurance requirements shall be made public on the state land office's website.

C. Bulk financial assurance.

(1) Lessees holding 10 or more leases may, with the commissioner's written approval, submit a single bond or other financial assurance instrument to cover multiple leases, according to the following schedule, except that no lease that is subject to heightened financial assurance requirements is eligible for inclusion in, or coverage under, a bulk financial assurance instrument:

between 2 and 9 leases: \$150,000 per lease;
between 10 and 19 leases: \$130,000 per lease;
between 20 and 49 leases: \$110,000 per lease;
50 or more leases: \$100,000 per lease.

(2) In the event the commissioner accepts one or more bulk financial assurance instruments from a particular lessee, the lessee shall provide a schedule listing all leases subject to the bulk financial assurance instrument, and the wells located on each lease. The commissioner shall require the lessee to update such schedules annually, or upon any lease assignment, expiration or cancellation as the commissioner may require.

(3) Excluding any lease subject to a heightened financial assurance requirement, the total amount required of a single lessee shall not exceed \$40,000,000.

D. Reporting requirements.

(1) Each lessee shall file an annual report on or before July 1 of each year, beginning on July 1, 2027, certified by a person with authority to bind the lessee. Operators of communitized wells subject to communitization agreements approved by the commissioner may in lieu of the lessee, and upon written approval by the commissioner, submit the annual report upon which the communitized well(s) has a location, provided that (a) the lessee in writing agrees to be bound by the operator's report and (b) the operator-submitted report encompasses the entire lease and is not limited to only the communitized well(s) located on the lease(s).

(2) The report shall cover activities for the previous calendar year (January 1 – December 31) and include the following for each lease held by that lessee:

(a) inventory of active and inactive wells on the lease, for each well with reference to well name, API number, operator, date of last production, total reported oil production (in BBLs) and gas production (in BOE) reported during the previous calendar year for production wells and total reported injection (in BBLs) for injection or disposal wells, and whether the well is part of an oil and gas unit, a communitization agreement, or both;

(b) inventory of other fixed infrastructure on the lease acreage that is related to oil and gas lease operations, including, but not limited to, tank batteries, ponds, separators, but not including transient equipment such as vehicles;

(c) list of any spills or releases of hydrocarbons, produced water, or other contaminants on lease premises, whether or not the incident was reported to the oil conservation division, with

reference to latitude/longitude coordinates, substance(s) released, estimated quantity, responsible party, and status of remediation, to the extent known by the lessee;

(d) identification of any wells plugged in the previous 12 months and a summary and cost of plugging, remediation, and reclamation performed for associated areas of operations;

(e) identification of any warning letters, notices of violation, fines, penalties, civil actions, criminal actions, or judgments issued or initiated by any governmental entity with respect to oil and gas operations on the lease premises, by reference to date, nature of the alleged violation or action, and issuing or initiating entity; and

(f) identification of any civil litigation not initiated by a governmental entity concerning or arising out of oil and gas operations on the lease premises.

(3) For a lease for which the lessee holds the record title and is not the operator of wells on the lease, the lessee shall include information to the extent known by the lessee after performing reasonable due diligence and inquiry of operator(s) on the lease.

(4) The commissioner may prescribe a form and submission format (e.g., web portal and template) for the annual report. To the extent there is no change from a prior year's report in any particular category or overall and the lessee has performed reasonable due diligence, a lessee or communitized well operator (if applicable) may so certify in writing, in lieu of filing a full report.

(5) In the event that any errors or omissions are identified, the lessee shall amend and resubmit the annual report within 30 days.

(6) Lessees shall reasonably cooperate with the commissioner's inquiries regarding all matters pertaining to state land office financial assurance requirements or to the related reporting requirements of this Part. Based on compliance issues related to a particular lease or lessee, the commissioner may request, and the lessee shall provide, additional information to be submitted in a lessee's annual reporting.

(7) Information contained in annual reports will be available for public inspection.

E. Periodic adjustment and review of financial assurance levels.

(1) The monetary amounts of all financial assurances shall be adjusted every five years for inflation based on the preceding calendar year's change in the consumer price index for All Urban Consumers (CPI-U), United States City Average for All Items, published by the United States department of labor. The effective date of the adjustment shall be January 1 of the sixth year (the first day following each five-year review cycle).

(2) The commissioner will periodically, but no less than every five years, review the sufficiency of each lessee's financial assurance. Factors the commissioner may consider include the status of the lease (e.g., number of active and inactive wells, lease acreage, number of operators on the lease), the compliance history of lessee with respect to the specific lease in question and other state land office instruments, and changes to actual or estimated costs of plugging, remediation, reclamation, and other compliance activities. In the event the commissioner determines a given financial assurance is inadequate to protect the state land office and applicable trust beneficiary, the commissioner shall send written notice by certified mail or courier to the lessee of the change and lessee shall have 90 days from the date of mailing to update its financial assurance. Failure of the commissioner to engage in financial assurance sufficiency review of any particular lease or lessee in accordance with this paragraph shall not be evidence or an admission of the commissioner's acceptance of the lessee's current financial assurance as adequate and shall not prevent any subsequent financial assurance sufficiency review.

(3) In the event that a well bond or other financial assurance on file with the New Mexico oil conservation division covers operations on a particular lease and provides the commissioner access to such financial assurance, the commissioner may adjust downward the monetary value of the financial assurance required under this Part by up to the amount of the bond or other financial assurance on file with the New Mexico oil conservation division that is applicable to wells on state trust land.

F. Forms of financial assurance.

(1) A surety bond shall be written on a form prescribed or approved by the commissioner. The surety must be certified by the United States department of the treasury to issue surety bonds and must be authorized to do business in New Mexico. The bond shall be non-cancellable.

(2) In lieu of a surety bond, but in the same amounts and subject to the same substantive requirements set forth in this Part, with commissioner approval a lessee may post:

(a) an irrevocable letter of credit, on a form prescribed or approved by the commissioner, issued by a federally-insured financial institution either doing business in New Mexico or that has agreed in writing to submit itself to the jurisdiction of New Mexico courts. Irrevocable letters of credit shall require the issuing bank to notify the commissioner in writing of any decision to not renew the letter of credit at least 120 days in advance, and shall provide the commissioner the right to redeem the letter of credit prior to non-renewal;

(b) a cash deposit submitted to the commissioner, which shall be held in suspense unless and until the financial assurance is eligible for release or the commissioner makes a claim against the deposit. Any interest on a cash deposit shall inure to the benefit of the commissioner and state land office, for the benefit of the applicable trust beneficiary; or

(c) other alternative forms of financial assurance, which may be considered on a case-by-case basis, at the commissioner's sole discretion, except that self-insurance is categorically prohibited.

G. Waivers. A lessee may request a waiver of the financial assurance requirement if the lessee does not intend to conduct or allow any development of oil and gas on the lease acreage, which waiver is at the commissioner's sole discretion. Any request for a waiver must be made within 30 days of lease issuance or assignment. Waivers are not available for leases whose acreage contains producing or inactive wells, unremediated spills or releases of hydrocarbons, produced water, or other contaminants, or infrastructure related to oil and gas development from the lease acreage. In the event a lessee obtains a waiver, but then proceeds, or allows another to proceed, with oil and gas development on the lease, the lessee must so notify the state land office and post the required financial assurance 30 days prior to commencement of such development. In the event a lessee obtains a waiver of the financial assurance requirement, proceeds with oil and gas development on the lease, but fails to notify the state land office and post the required financial assurance, the lessee shall be ineligible for any financial assurance waiver for a period of five years.

H. "Riders" limited. The commissioner will not accept riders or amendments to financial assurance instruments that change the name of the lessee, that change the scope of coverage, or that add multiple lessees, including subsidiaries or affiliates, to the same financial assurance instrument without specific written approval of the same. Lessees who under the pre-existing version of this Part are sharing the same financial assurance instrument via rider shall obtain their own separate financial assurance in conformity with the phase-in schedule listed in Subsection K.

I. Claims on financial assurance.

(1) The commissioner shall provide written notice to a lessee by certified mail or courier of any claim made against a financial assurance instrument on file with the commissioner, at the lessee's last address of record on file with the state land office's oil, gas, and minerals division. The commissioner may, but has no obligation to, notify any party other than the surety or issuing financial institution, and lessee of record, regarding any financial assurance claim.

(2) The commissioner may require may require heightened financial assurance, or a different form of financial assurance, based on payment of the financial assurance claim.

(3) In the event a surety (for a surety bond) or issuing bank (for a letter of credit) fails to respond to a claim against the bond or letter of credit, or fails to honor a substantiated claim, the commissioner may reject the bond or letter of credit and require the lessee to obtain within 30 days a new form of financial assurance that is in conformity with this Part.

(4) The commissioner's claim against financial assurance for any particular lease does not affect the status of financial assurance instruments the same lessee may have submitted for the coverage of other leases.

(5) In the event a lease lacks adequate financial assurance and the lease acreage is included in a communitization agreement, at the commissioner's sole discretion, the commissioner may accept financial assurance posted by an operator of a well subject to the communitization agreement in lieu of the lessee, provided the financial assurance is written to cover the entire affected lease and is not limited to the communitized well or the communitized well operator. An operator providing a financial assurance in lieu of a lessee shall not transfer the operatorship of the communitized well(s) without the prior written consent of the commissioner.

J. Notifications.

(1) A notification by the state land office that a lease will be canceled for failure to file adequate financial assurance shall be made by certified mail. A notification that heightened financial assurance is required or that a claim is made against a financial assurance instrument shall be made by certified mail or courier. All other notifications or communications by the state land office may be made by certified mail or courier, regular mail, or electronic mail. No proof of receipt is required for any of the notices referenced in this paragraph. The agency has no obligation to mail any correspondence to an address other than the address of record on file with the oil, gas, and minerals division of the state land office.

(2) Lessees shall notify the state land office within 30 days of any change of name or change of address of a surety or financial institution issuing a letter of credit or in the event lessee is informed of any change to or non-renewal of the financial assurance or the insolvency of the surety or other entity issuing the financial assurance.

K. Release of financial assurance. Financial assurance may only be released upon one of the following events: (1) the lessee submits a substitute form of financial assurance in compliance with this part and the commissioner approves the substitution; or (2) the lessee no longer holds any state oil and gas leases and the commissioner has confirmed in writing there are no outstanding compliance or performance issues with respect to lessee's lease(s), and no financial assurance shall be released unless all plugging, remediation, reclamation and other lease obligations have been completed to the commissioner's satisfaction, unless the commissioner, in the commissioner's sole discretion, authorizes the release of the financial assurance for the specific purpose of meeting such obligations.

L. Phase-in schedule for financial assurances. The requirements of this Section shall apply to all new oil and gas leases, or existing leases for which no financial assurance acceptable to the commissioner has been filed (but which is required to be filed), immediately upon the effective date of this Section. The requirements of this Section shall become applicable to all oil and gas leases pre-existing the effective date of this Section, and for which financial assurance acceptable to the commissioner has been filed, according to the following schedule:

(1) any lease subject to any heightened financial assurance requirements shall be in compliance within 90 days of written notice by the commissioner by certified mail or courier that heightened financial assurance is required (subject to any authorized deferral by the commissioner); except that in instances where the commissioner requires a heightened financial assurance because the commissioner has been paid on a claim against the lessee's prior financial assurance, or because the commissioner has filed a claim against the lessee's prior financial assurance and the surety, bank, or other third party issuing the financial assurance has been unresponsive to the commissioner's claim, the lessee shall have 30 days;

(2) lessees holding 50 or more oil and gas leases shall bring all their leases into compliance with this part by March 1, 2027; and

(3) all other lessees shall bring their leases into compliance with this part by June 1, 2027.
[19.2.100.23 NMAC - Rp, 19.2.100.23 NMAC, 6/30/2016; A, 6/11/2019; A, 9/28/2026]

19.2.100.24 [RESERVED]

[19.2.100.24 NMAC - Rp, 19.2.100.24, 6/30/2016]

19.2.100.25 COMPETITIVE BIDDING ON ALL LANDS WITHIN RESTRICTED DISTRICTS: No oil and gas leases upon any state lands within any restricted district will be issued except to the highest and best bidder after competitive offers by sealed bids or a public auction. Regularly advertised sales covering lands within restricted areas are held on the third Tuesday of each month, or on the next business day following where the third Tuesday falls on a legal holiday. Lands outside the restricted districts may also be offered on said third Tuesday when it is deemed advisable. The commissioner may, in the commissioner's discretion, hold oil and gas lease sales, as aforesaid, by a combination of the methods set out above, and may also hold any sale at the county seat of the county where the lands or the greater part thereof are situated.

[19.2.100.25 NMAC - Rp, 19.2.100.25 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.26 NOTICE OF SALE: On or before 10 days prior to the date of any such sale, notice of the same shall be posted in a conspicuous place in the state land office specifying the place, date and hour of the sale, and containing a description of the lands to be offered for lease, with a statement of the minimum bid which will be accepted.

[19.2.100.26 NMAC - Rp, 19.2.100.26 NMAC, 6/30/2016]

19.2.100.27 ACCEPTANCE OF BIDS: Up to the hour set for such sale, the commissioner will receive sealed bids for an oil and gas lease upon any tract of land described in the posted notice. All sealed bids submitted will be opened at the hour mentioned in the notice, and the lease will be awarded to the highest and best bidder, subject to the discretionary right of the commissioner to reject any bid.

[19.2.100.27 NMAC - Rp, 19.2.100.27 NMAC, 6/30/2016]

19.2.100.28 WHERE NO SEALED BIDS RECEIVED: Each of said tracts described in the notice on which no sealed bids are received may be offered for lease at public auction to the highest and best bidder, for cash, and lease will be awarded to such highest and best bidder if the offer shall be deemed acceptable. If no sealed bids or other bids are received for any tract described in the notice, such tract will be withdrawn until further notice at the discretion of the commissioner.

[19.2.100.28 NMAC - Rp, 19.2.100.28 NMAC, 6/30/2016]

19.2.100.29 APPLICATION UNDER OATH - FEES: Application for lease accompanying sealed bids shall be executed under oath by the applicant, or by the applicant's agent or attorney, duly authorized in writing, or by an officer or attorney-in-fact of a corporation, if application is by a corporation, and must be accompanied by a bid fee as set forth in the schedule of fees (applied toward application fee for successful bidder) and the amount of the first year's rental and bonus offered. Unless approval of the commissioner for use of non-certified exchange is obtained, payment shall be made in cash, money order or certified check on a solvent bank. The land office furnishes application blanks upon request.

[19.2.100.29 NMAC - Rp, 19.2.100.29 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.30 TIE BIDS: When two or more sealed highest and best bids received for the same tract of land are equal, the commissioner (if such highest and best bidders are present and cannot agree, by stipulation in writing, on how such tract shall be disposed of) shall call such equal highest and best bidders before the commissioner in the state land office (or if such sale is held in the county in which such lands are located, the person conducting such sale shall call such equal highest and best bidders before the person) on the same day such bids are opened, and again offer such tracts at auction to such bidders only, and grant such lease to the then highest and best bidder. If such bidders are not present when such bids are opened, then the commissioner will notify such bidders to submit sealed proposals within 10 days next following the date of the sale at which such bids were determined to be equal.

[19.2.100.30 NMAC - Rp, 19.2.100.30 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.31 RIGHT TO REJECT ANY AND ALL BIDS - WITHHOLDING FROM LEASING: The commissioner reserves the right to reject any and all bids not in conformity with law and the posted notice of sale, and to require higher rentals, impose additional restrictions and requirements and to withhold lands from leasing whenever, in the commissioner's discretion, the commissioner shall deem it to be for the best interests of the trust to do so.

[19.2.100.31 NMAC - Rp, 19.2.100.31 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.32 TRANSFER AND ASSIGNMENT OF OIL AND GAS LEASES: Any transfer of an oil and gas lease or assignment is considered to convey an interest in real property and is therefore required to be formally executed by the proper parties and upon prescribed forms furnished by the state land office before such transfer or assignment shall be approved by the commissioner. Ordinarily, leases shall be transferred or assigned in the names of no more than two persons or legal entities as provided in 19.2.100.20 NMAC.

[19.2.100.32 NMAC - Rp, 19.2.100.32 NMAC, 6/30/2016]

19.2.100.33 JOINT TENANTS: Where an oil and gas lease is held in joint tenancy with the right of survivorship and a tenant dies, the lease shall be considered as belonging to the survivor or survivors and shall be so transferred upon presentation of a certified copy of the death certificate of the deceased tenant and payment of the proper rentals and fees.

[19.2.100.33 NMAC - Rp, 19.2.100.33 NMAC, 6/30/2016]

19.2.100.34 RESIDENT DECEDENT: To effect transfer of regular interest in state oil and gas leases of a deceased person resident in New Mexico, proper probate proceedings should be had in the county of residence of the deceased and certified copies of such proceedings, showing proper legal authority to transfer, should be filed with the commissioner.

[19.2.100.34 NMAC - Rp, 19.2.100.34 NMAC, 6/30/2016]

19.2.100.35 FOREIGN DECEDENT: In the event a decedent owner of a lease was resident of a state other than New Mexico, the estate must be probated in the state of such residence and ancillary proceedings conducted in the proper New Mexico court, and certified copies of such proceedings showing proper legal authority to transfer must be filed with the commissioner. Provided, however, where the decedent died on or after July 1, 1976, the lease may be transferred upon the foreign personal representative's compliance with the provisions of the New Mexico Probate Code.

[19.2.100.35 NMAC - Rp, 19.2.100.35 NMAC, 6/30/2016]

19.2.100.36 CO-OPERATIVE AGREEMENTS: Assignments of acreage committed to unit or co-operative agreements shall meet the requirements of Subsection G of 19.2.100.51 NMAC.

[19.2.100.36 NMAC - Rp, 19.2.100.36 NMAC, 6/30/2016]

19.2.100.37 [RESERVED]

[19.2.100.37 NMAC - Rp, 19.2.100.37, 6/30/2016]

19.2.100.38 LEASE CONTINUED BY PRODUCTION IN PAYING QUANTITIES: Except as otherwise provided in a co-operative agreement, production in paying quantities upon any part of the acreage included in any state oil and gas lease continues the lease upon every subdivision thereof (whether the same remains in the original lease or is assigned before or after production is had) subject, however, to the continued payment of rentals at the rate in effect at the time of production, and further subject to the implied covenants of development contained in any such lease.

[19.2.100.38 NMAC - Rp, 19.2.100.38 NMAC, 6/30/2016]

19.2.100.39 ASSIGNMENTS TO BE IN TRIPLICATE - ACKNOWLEDGMENT REQUIRED:

Assignments of oil and gas leases shall be filed in triplicate in the office of the commissioner and must be executed and acknowledged in the manner provided for transfer of real estate in New Mexico. The original copy of each assignment will be recorded and filed as a public record in the state land office and one copy returned to the person entitled to same.

[19.2.100.39 NMAC - Rp, 19.2.100.39 NMAC, 6/30/2016]

19.2.100.40 ASSIGNMENTS TO BE RECORDED IN THE LAND OFFICE: Assignments must be filed with the commissioner for approval within one hundred days after having been signed by the assignor as shown upon the face of the instrument, accompanied by a filing fee as set forth in the schedule of fees. Those presented after expiration of that time shall not be approved unless it can be shown to the satisfaction of the commissioner that extreme hardship will result to one or more of the parties and that no prejudice to the rights of the state will occur. An additional fee as set forth in the schedule of fees will be charged for each such assignment (or each group of assignments if the same basic facts are involved) to cover expense of investigation and records search.

[19.2.100.40 NMAC - Rp, 19.2.100.40 NMAC, 6/30/2016]

19.2.100.41 RESTRICTIONS: Assignments shall not be accepted nor approved by the commissioner:

- A. for less than assignor's entire interest in any legal subdivision (except where transfer is by operation of law);
- B. for less than a legal subdivision;
- C. in the names of more than two persons or legal entities. (See 19.2.100.20 NMAC);
- D. in the name of a trusteeship unless the trust is expressly set forth and not more than two persons are named as trustee;
- E. after *lis pendens* is filed;
- F. for any assignment containing any language other than the approved form;
- G. where the assignment covers acreage included in more than one lease;
- H. if the lease is not in good standing; or
- I. unless the assignor covenants to the assignee and the commissioner that the assigned leasehold estate is valid and subsisting and that all rental and royalties due thereunder have been properly paid.

[19.2.100.41 NMAC - Rp, 19.2.100.41 NMAC, 6/30/2016]

19.2.100.42 APPROVAL AND FILING WITHHELD:

- A. When assignments are accompanied by personal checks, the commissioner reserves the right to withhold approval of any and all assignments until checks are cleared and rentals on the lease from which assignments are made must be fully paid before assignments are subject to filing in the state land office.
- B. When an assignment is presented to the commissioner for approval and the address of record of the assignee thereon is the same as that of the assignor, or when such address had not been established on the records of the state land office, or when the approved assignment is to be returned to the assignor, the commissioner reserves the right to withhold approval and filing of the assignment until the assignee has verified, under oath, the address and the assignee's acceptance of the assignment of the lease.

[19.2.100.42 NMAC - Rp, 19.2.100.42 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.43 EFFECT OF COMMISSIONER'S APPROVAL - MISCELLANEOUS INSTRUMENTS:

Upon approval by the commissioner, the assignor shall be relieved from all obligations owing to the state with respect to the lands embraced in the assignment, and the state shall be likewise relieved from all obligations to the assignor as to the said lands, and the assignee shall succeed to all of the rights and privileges of the assignor and assumes all of the duties and obligations of the assignor as to the said lands. Provided, however, any record owner of any lease may enter into any contract for development of the leasehold premises or any portion thereof, or may create overriding royalties or obligations payable out of production, or enter into any other agreements with respect to the development of the leasehold premises or disposition of the production therefrom, and it shall not be necessary for any such contracts, agreements or other instruments to be approved by the commissioner, but nothing contained in these items shall relieve the record title owner of such lease from complying with any of the terms or provisions thereof, and the commissioner shall look solely and only to such record owner for compliance therewith, and in any controversy respecting any such contracts, agreements or other instruments entered into by the lessee with other persons, neither the state of New Mexico nor the commissioner shall be a necessary party. All such contracts and other instruments may be filed either in the office of the commissioner or recorded in the office of the county clerk wherein the lands are situated, and the filing or recording thereof shall constitute notice to all the world of the existence and contents of the instrument so filed. The fee for filing such miscellaneous instruments in the office of the commissioner shall be as set forth in the schedule of fees.

[19.2.100.43 NMAC - Rp, 19.2.100.43 NMAC, 6/30/2016]

19.2.100.44 [RESERVED]

[19.2.100.44 NMAC - Rp, 19.2.100.44 NMAC, 6/30/2016]

19.2.100.45 TRANSFER OF RIGHTS BY CORPORATE ENTITIES - BY PURCHASE: Transfer of oil and gas interests by corporations shall be formally executed, as in the case of transfer of real estate in New Mexico, in conformity with statute and by payment of proper fees as provided in this rule.

[19.2.100.45 NMAC - Rp, 19.2.100.45 NMAC, 6/30/2016]

19.2.100.46 TRANSFER OF RIGHTS BY CORPORATE ENTITIES - BY CONSOLIDATION: In cases where corporations consolidate, transfer of oil and gas interests to the newly created corporation shall be accomplished pursuant to 19.2.100.39 through 19.2.100.45 NMAC.

[19.2.100.46 NMAC - Rp, 19.2.100.46 NMAC, 6/30/2016]

19.2.100.47 TRANSFER OF RIGHTS BY CORPORATE ENTITIES - BY MERGER: In cases where two or more corporations merge, transfer of oil and gas interests to the surviving corporation shall be accomplished by filing with the commissioner a copy of the merger agreement or certificate of merger. Thereafter, the oil and gas lease shall be transferred on the books of the land office in the name of the surviving corporation.

[19.2.100.47 NMAC - Rp, 19.2.100.47 NMAC, 6/30/2016]

19.2.100.48 TRANSFER OF RIGHTS BY CORPORATE ENTITIES - BY REORGANIZATION:

Where the assets of any corporation are taken over under court order by a corporation, the procedure will follow the provisions of the court order, which should direct separate assignments to be executed and filed for approval in the state land office.

[19.2.100.48 NMAC - Rp, 19.2.100.48 NMAC, 6/30/2016]

19.2.100.49 NOTICE OF PENDENCY OF SUIT FEES - EFFECT ON THE ABILITY TO ASSIGN

LEASE: At the time of filing of any suit affecting an oil and gas lease or the interest of any person therein, or at any time thereafter before judgment, the plaintiff may file with the commissioner a notice of pendency of suit containing the names of the parties thereto, the object of the action and a description of the lands affected, and upon filing of such notice and payment of the required fees as set forth in the schedule of fees, the land affected by such suit will not be subject to assignment or other disposition until such suit shall be finally determined and disposed of.

[19.2.100.49 NMAC - Rp, 19.2.100.49 NMAC, 6/30/2016]

19.2.100.50 CANCELLATION FOR DEFAULT: The commissioner may cancel any lease or assignment thereof for default upon giving the lessee or assignee notice by registered mail (certified mail if the lease so provides) of the commissioner's intention to cancel, specifying the default and, unless the lessee or assignee

remedies the default within thirty days of the mailing date, the commissioner may cancel the lease or assignment. Proof of receipt of notice is not necessary or required before a valid cancellation may be entered.
[19.2.100.50 NMAC - Rp, 19.2.100.50 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.51 CO-OPERATIVE AND UNIT AGREEMENTS:

A. Purpose - consent: The commissioner may consent to and approve agreements made by lessees of state lands for any of the purposes enumerated in Section 19-10-45 NMSA 1978.

B. Application - requisites of agreements: Formal application shall be filed with the commissioner for approval of a co-operative or unit agreement at least 20 days in advance of the New Mexico oil conservation division's hearing date. A filing fee as set forth in the schedule of fees shall be paid for each section or fractional part thereof, whether the acreage is federal, state or privately owned. A unit agreement presented must have a unique unit name that will identify the agreement for so long as the agreement remains in effect and only under extraordinary circumstances will a unit name change be allowed after initial approval is granted. Applications for approval shall contain a statement of facts showing:

- (1) that such agreement will tend to promote the conservation of oil and gas and the better utilization of reservoir energy;
- (2) that under the proposed unit operation, the state of New Mexico will receive its fair share of the recoverable oil and gas in place under its lands in the proposed unit area;
- (3) that each beneficiary institution of the state of New Mexico will receive its fair and equitable share of the recoverable oil and gas under its lands within the unit area; and
- (4) that such unit agreement is in other respects for the best interest of the trust.

C. Information to be furnished:

(1) Complete geological and engineering data shall be presented with the application and the information offered for the commissioner's action must be in clear and understandable form. Such data shall be kept confidential by the commissioner pursuant to Section 19-1-2.1 NMSA 1978 for a period of six months or until the unit agreement is approved, whichever first occurs. Then such data will be made a permanent part of the records and open for public inspection. If for any reason such proposed agreement is not approved, then at the request of the applicant, the data shall be returned to the applicant.

(2) Use of fresh water: The use of fresh water in waterflood units is discouraged in the cases where salt water is practical. If an operator plans to use fresh water in a proposed unit, the following specific information should also be provided:

- (a) laboratory analyses of water compatibility tests (fresh vs. salt water);
- (b) reservoir analyses for swelling clays and soluble salts;
- (c) estimate of monthly make-up water required for operations; and
- (d) location and depth of area salt water wells or quantities of produced water

available for injection.

D. Decision postponed: In any matter respecting co-operative and unit agreements, the commissioner may postpone the commissioner's decision pending action by the oil conservation division and may use any information obtained by the commissioner's own investigators, or obtained by the oil conservation division to enable the commissioner to act properly on the matter. The applicant shall deposit with the commissioner a sum of money estimated to be sufficient to meet the actual and necessary expenses of any investigation or inspection by representatives of the state land office.

E. Leases conformed: When any co-operative or unit agreement has been approved by the commissioner and executed by the lessee, the terms and provisions of the lease, so far as they apply to lands within the unit area, are automatically amended to conform to the terms and provisions of the co-operative agreement; otherwise, said terms and provisions shall remain in full force and effect.

F. Posting to tract books: In every case where a co-operative unit agreement is finally approved by the commissioner such agreement and the application therefor shall be entered upon the tract books of the state land office, filed and recorded, together with any order respecting the same issued by the New Mexico oil conservation division; any modification or dissolution of such co-operative or unit agreement shall be likewise entered and filed. The fees therefor shall be as set forth in the schedule of fees.

G. Assignments: No assignment of acreage under lease within any unitized or co-operative area will be approved by the commissioner unless the assignment is subject to the provisions of the co-operative or unit agreement covering the area within which the acreage sought to be assigned lies, or unless the commissioner and all parties to the co-operative agreement agree, in writing, that such acreage is not needed for proper co-operative operations.

H. Form of agreement: No specific forms for the various types of co-operative or unit operating agreements are required; however, sample forms of agreements now in operation will be furnished for guidance upon request, if available. Agreements submitted for approval must be submitted in duplicate. At least one copy must contain original signatures, which copy, after approval of the agreement, will be retained by the commissioner as the approved copy.

[19.2.100.51 NMAC - Rp, 19.2.100.51 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.52 FORCED POOLING - OIL CONSERVATION DIVISION ORDER:

A. The record owner or operator of all oil and gas leases covering the state owned lands forced pooled by order of the New Mexico oil conservation division, either under Section 70-2-17 NMSA 1978 (gas proration unit) or under Section 70-7-1 NMSA 1978 (statutory unitization act for secondary recovery), shall file with the commissioner the following information:

- (1) one copy of application for hearing for forced pooling at least ten days prior to date set for hearing;
- (2) state lease number, record owner and legal description of all state lands forced pooled;
- (3) oil conservation division order number and date;
- (4) legal description and type (federal, fee, or Indian) of all lands included in forced pooling order;
- (5) location, formation, and depth of well;
- (6) oil conservation division approved copies of forms numbered C-101, C-102, C-103, C-104 and C-105. These are to be filed at same time as filed with oil conservation division;
- (7) date production commenced; and
- (8) a copy of the agreement for unit operations involving state lands approved in writing by the oil conservation division, and signed by parties required by the agreement to initially pay at least seventy-five percent of unit operating costs, and by owners of at least seventy-five percent of the non-cost bearing interests such as royalties, overriding royalties and production payments.

B. This rule has no application to a situation wherein all parties have voluntarily executed a communitization agreement covering all lands in a proration unit or a secondary recovery unit and such agreement has been approved by the commissioner.

[19.2.100.52 NMAC - Rp, 19.2.100.52 NMAC, 6/30/2016]

19.2.100.53 COMMINGLING AND OFF-LEASE STORAGE OF OIL AND GAS ON STATE TRUST LANDS:

A. Commingling prohibited: Unless approved pursuant to Subsection B of 19.2.100.53 NMAC, the commingling, confusion or the intercommunication of oil or gas production from any state well with any production from any other well, whether state or non-state, by the use of common tankage facilities or central delivery points, is strictly prohibited.

B. Commingling allowed - off-lease storage:

- (1) Commingling of oil and gas production, including downhole commingling, if properly metered or allocated and accounted for, may be permitted within the discretion of the commissioner only after the commissioner's receipt of a written application containing the information specified in Subsection C of 19.2.100.53 NMAC and an application fee as set forth in the schedule of fees.
- (2) Off-lease storage of production may be permitted if properly metered or allocated and accounted for, within the discretion of the commissioner only after the commissioner's receipt of a written application containing the information specified in Subsection C of 19.2.100.53 NMAC and an application fee as set forth in the schedule of fees.

C. Application for permission to commingle or off-lease store production. Applications for permission to commingle or off-lease store production shall be directed to the commissioner and shall include:

- (1) formal application stating the type of permission desired and the reasons therefor, accompanied by an application fee as set forth in the schedule of fees;
- (2) plat showing the location of leases, wells, flow lines, metering facilities and common tankage. All plats and diagrams should differentiate between surface and underground pipe;
- (3) a list of the involved leases arranged by their state land office lease number, their legal description and including state beneficiaries;
- (4) a designation of the pool from which each well produces;

- (5) an economic analysis of proposed operation showing profit or loss to the state of New Mexico;
- (6) schematic diagram of entire system from production manifold to pipeline connection showing position of all components of flow stream;
- (7) description of the operating sequence explaining the complete operation;
- (8) the applicant's proposal for allocating or metering production so that all production is properly accounted for at the well; and
- (9) any other pertinent data that will assist the commissioner in deciding upon the application.

[19.2.100.53 NMAC - Rp, 19.2.100.53 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.54 ACREAGE TAKEN FOR MILITARY PURPOSES - WAIVER OF DEVELOPMENT REQUIREMENTS:

A. Where the use of lands embraced in any state oil and gas lease is taken by the United States government for military purposes, under such circumstances as will prevent drilling and development by the lessee, the commissioner may, on application by the lessee, waive compliance with the drilling and development requirements of any such lease during the period of such use and for six months thereafter, but in no event for more than five years from the beginning of such use by the United States. Where the use of only part of the lands embraced in such oil and gas lease is taken, any waiver shall extend only to the lands the use of which is so taken.

B. In all cases, the lessee shall continue to pay rentals at the rate which is in effect at the time of taking, and failure to so pay rentals subjects the lease to the regular cancellation procedure.

C. Waivers, when executed and approved, relate back to the date of the notice of taking by the United States.

[19.2.100.54 NMAC - Rp, 19.2.100.54 NMAC, 6/30/2016]

19.2.100.55 STIPULATION TO CURRENT LEASE PROVISIONS:

A. The owner of any oil and gas lease issued by the commissioner which does not contain all of the provisions of the current applicable five- or ten-year lease form or which does not include helium gas within its terms may file an application to include all the provisions of such applicable lease form and to include helium gas, provided the lease has been maintained in good standing according to the terms and conditions thereof and all applicable statutes and regulations.

B. The application for stipulation shall be made in duplicate and on a form prescribed and furnished by the commissioner and shall be filed in duplicate, accompanied by the fee as set forth in the schedule of fees.

C. Upon filing of such an application and determination by the commissioner that the application conforms to the governing statutes and this rule, the commissioner shall execute a stipulation and thereupon the provisions of the current applicable five- or ten-year lease form and inclusion of helium gas will be part of said existing lease with the like effect as if originally incorporated therein; provided, however, that no such stipulation shall be effective or binding on any of the parties until each and every working interest owner and record owner of the original lease or approved assignment thereof has signed the stipulation.

D. One executed copy of the stipulation will be attached to the original lease in the files of the commissioner. The remaining copy will be forwarded to the applicant with the receipt of the state land office evidencing payment of the filing fee.

[19.2.100.55 NMAC - Rp, 19.2.100.55 NMAC, 6/30/2016]

19.2.100.56 CONTINUATION OF LEASE AFTER EXPIRATION OF TERM:

A. The payment in advance of rentals for the lease year commencing at the expiration of the secondary term in a 10-year lease or at the expiration of the five-year term in a five-year lease shall be a prerequisite for relying upon current bona fide drilling or reworking operations to extend the lease beyond such term. There will be no refund by the state land office of any sum received by it as rental under the terms of any oil and gas lease issued by the commissioner, whether in the primary or secondary term or subsequent to the expiration thereof.

B. The owner of any oil and gas lease proposing to conduct drilling or reworking operations and proposing to rely upon such operations to extend the lease beyond the fixed term in accordance with the provisions thereof shall file in the oil and gas division of the state land office, prior to the expiration of the secondary term of a 10-year lease or the primary term of a five-year lease, a statement in writing of the location of the proposed well, the drilling or reworking of which will be relied upon to continue said lease in effect, the depth to which it is proposed to drill said well, the reworking operations which, if any, are contemplated and the name and address of the drilling

contractor or other persons who will conduct such operations. The approval by the commissioner of the operations so proposed will normally be evidenced by the signature of the commissioner on a copy of such statement, but any such proposed operation, about which a statement has been filed in accordance with this item, shall be conclusively presumed to have been approved by the commissioner prior to the expiration of the lease to which it relates, unless the commissioner shall, prior to the expiration of said lease, advise the applicant, in writing, of the commissioner's disapproval and the reasons therefor.

C. The owner of an oil and gas lease who, subsequent to the expiration of the secondary term in a 10-year lease or the primary term in a five-year lease, is engaged in drilling or reworking operations on lands embraced therein, and who proposes to rely upon such operations as extending said lease in accordance with the provisions thereof shall file a report of the status of such operations for each 30 day period during which they are continued. It shall contain a statement of the depth of said well, the status of any reworking operations at the end of said 30 day period, a general statement of the drilling or reworking operations that have been accomplished during the preceding 30 days, and the fact, if it is a fact, that such operations are bona fide in progress and will be continued. Status reports filed in the office of the commissioner within 15 days after the close of such a 30 day period shall meet the requirements of the lease. If operations have ceased during any period covered by a status report, such report shall state the date of cessation and the reason therefore, and the date of resumption of operations, if any.

D. Each application and stipulation filed under Subsection B of 19.2.100.56 NMAC shall be signed by the lease owner, if an individual; and if a partnership or corporation, by a responsible official thereof. The application shall be verified under oath and the stipulation shall be acknowledged. Each statement of operations and status report filed under this rule shall be signed by the lease owner, if an individual, or by a responsible official, if a partnership or corporation, and shall be verified by affidavit of the signer.

E. Operations conducted by any person under the terms of an oil and gas lease issued by the commissioner, including all operations conducted pursuant to this rule shall be subject to inspection at all reasonable times by representatives of the state land office.

[19.2.100.56 NMAC - Rp, 19.2.100.56 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.57 CALCULATING AND REMITTING OIL AND GAS ROYALTIES:

A. Payment of royalties - appeal to commissioner: Payment shall be made in the time and in the manner described below:

(1) Each lessee whose average monthly state royalty payment for the twelve months ending with the latest March 31, was twenty-five thousand dollars (\$25,000) or less shall pay royalties on or before the twenty-fifth day of the second month following the month for which royalties are due. Unless the remitter elects to pay royalties by means of electronic funds transfer, payment shall be made by check payable to the commissioner of public lands. Payment shall be mailed or delivered to the taxation and revenue department along with any paper report. If the remitter elects to pay royalties by means of electronic funds transfer, payment shall be made in accordance with Option 1 or Option 2 in Paragraph (4) of Subsection A of 19.2.100.57 NMAC and shall conform with the special instructions on electronic transmission of state royalty payments for separate oil and gas royalty reporting in the ONGARD system.

(2) Unless an election is timely made to pay royalties pursuant to Paragraph (3) of this Subsection, each lessee whose average monthly state royalty payment for the twelve months ending with the latest March 31, was greater than twenty-five thousand dollars (\$25,000) shall pay royalties on or before the twentieth day of the month following the month for which the royalties are due. Payment shall be made in accordance with Paragraph (4) of this Subsection.

(3) In lieu of paying royalties within the time specified by Paragraph (2) of this Subsection, a lessee may submit to the lessor, in writing, an election to pay royalties within the time frames specified for state severance taxes. Royalties paid by any lessee making the election under this Paragraph shall be due on the twenty-fifth day of the second month following the month for which the royalties are due. However, on or before the twenty-fifth day of the month in which the election is made and on or before the twenty-fifth day of each month thereafter, the lessee shall also make an advance royalty payment. Beginning with royalties initially paid under this Paragraph and each month thereafter, the previous month's advance royalty payment shall be taken as a credit. The amount of the advance royalty payment shall be adjusted by July 25 of each year and shall equal the average monthly royalty paid during the twelve months ending with the latest March 31. Payment shall be made in accordance with Paragraph (4) of this Subsection.

(4) Lessees remitting royalties under the provisions of Paragraphs (2) and (3) of this Subsection shall make payments in accordance with one of the four options listed below. For payment to be considered timely, the state land office must have access to funds on the due date for royalty remittances. Payment

shall be made in accordance with the instructions on special payment procedures. Such payment can only be utilized with the separate oil and gas royalty reporting in the new ONGARD system.

(a) Option 1: automated clearinghouse (ACH) deposit.

(b) Option 2: fedwire transfer.

(c) Option 3: check drawn on any New Mexico financial institution. Payment shall be made in the manner prescribed by the provisions of this rule.

(d) Option 4: check drawn on any domestic non-New Mexico financial institution.

Payment shall be made in the manner prescribed by the provisions of this rule.

(e) "Financial institution" means any state- or nationally-chartered federally-insured financial institution.

(5) Irrespective of whether a lessee pays royalties pursuant to Paragraph (1), (2) or (3) of this Subsection, all royalty information shall be reported on forms prescribed by the lessor and shall be submitted on or before the twenty-fifth day of the second month following the month for which royalties are due. The lessee shall indicate in the space provided if payment accompanies the report or if payment is made by separate check, fedwire or ACH transfer.

B. Effective date: The provisions of 19.2.100.57 NMAC shall be used to calculate, report and remit royalties for oil and gas produced on or after January 1, 1990.
[19.2.100.57 NMAC - Rp, 19.2.100.57 NMAC, 6/30/2016]

19.2.100.58 OCD REPORTS: The producer or lessee of producing state lands shall file in the New Mexico state land office, Santa Fe, New Mexico, at the time of filing with the New Mexico oil conservation division (OCD), reports labeled C-101 through C-105.
[19.2.100.58 NMAC - Rp, 19.2.100.58 NMAC, 6/30/2016]

19.2.100.59 WAIVER OF DEVELOPMENT IN POTASH OR OTHER MINERAL AREAS: Application for waiver of compliance with exploratory drilling development or production requirements of a lease, or to extend the term thereof, where exploration and development operations of the oil and gas lease are inconsistent with the exploration and development operations of a state mineral lease, and where waste will occur, must be made in writing and accompanied by a filing and approval fee as set forth in the schedule of fees. Such applications must be filed in the state land office at least thirty days before expiration date of the oil and gas lease. No waivers or extension shall be granted by the commissioner for more than five years. Ordinarily, waivers will be granted by the commissioner only as to the legal subdivisions upon which the conflict exists.
[19.2.100.59 NMAC - Rp, 19.2.100.59 NMAC, 6/30/2016]

19.2.100.60 WATER WELLS:

A. Water wells drilled on all state oil and gas leases for temporary use on the lease and for purposes directly connected with operations shall be in compliance with the provisions of Sections 72-12-1 through 72-12-21 NMSA 1978, as amended, with the regulations of the state engineer, and with 19.2.12 NMAC.

B. Within 30 days after completion of said well, the lessee shall furnish in writing to the commissioner a report containing the following information:

(1) location of well; and

(2) depth, log and casing record production data.

[19.2.100.60 NMAC - Rp, 19.2.100.60 NMAC, 6/30/2016]

19.2.100.61 SALT WATER DISPOSAL: Lessees are expected to comply with all lawful rules of the New Mexico oil conservation division pertaining to prevention of waste, which includes disposal of produced salt water or brine. If state lands are needed for a salt water disposal operation, then application for a salt water disposal easement site shall be made to the "oil and gas division" or application for a business lease shall be made to the "land surface division" of the state land office, depending upon whether underground or surface disposal, respectively, is desired. Ordinarily, water produced on lease may be disposed of on lease without the commissioner's permission if the disposal operation otherwise meets the approval of the oil conservation division and is otherwise reasonable and accepted practice in the industry.

[19.2.100.61 NMAC - Rp, 19.2.100.61 NMAC, 6/30/2016]

[Applications for a salt water disposal easement or a business lease shall be made to the commercial division of the state land office.]

19.2.100.62 ROYALTY PURCHASE - PREFERENCE RIGHT: Requests made by petroleum refineries within the state to the commissioner to purchase state royalty oil as a preference right under the provisions of Sections 19-10-64 through 19-10-70 NMSA 1978 shall be accompanied by an order or ruling of the New Mexico oil conservation division determining that the applicant is qualified and otherwise entitled to such preference. Requests to purchase state royalty oil on a bid basis may be made directly to the commissioner in letter form. In either case, the applicant must identify the wells from which the applicant desires to purchase the royalty oil.
[19.2.100.62 NMAC - Rp, 19.2.100.62 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.63 RESERVATION OF RIGHT TO PURCHASE PRODUCTION: The state reserves a continuing option to purchase at any time and from time to time, at the market price prevailing in the area on the date of purchase, all or part of the oil and gas that may be produced from the lands embraced in all leases issued on or after June 11, 1973.
[19.2.100.63 NMAC - Rp, 19.2.100.63 NMAC, 6/30/2016]

19.2.100.64 APPEALS FROM DECISION OF THE COMMISSIONER: Any party aggrieved by any ruling or decision of the commissioner affecting such party's interest in any oil and gas lease may appeal to the appropriate district court within sixty days after such ruling or decision is rendered pursuant to Section 19-10-23 NMSA 1978.
[19.2.100.64 NMAC - Rp, 19.2.100.64 NMAC, 6/30/2016]

19.2.100.65 [RESERVED]
[19.2.100.65 NMAC - Rn, SLO Rule 1, Section 1.067, 12/13/2002; Repealed, 6/30/2016]

19.2.100.66 SURFACE OPERATIONS ON STATE OIL AND GAS LEASES:

A. Purpose and application of 19.2.100.66 NMAC: The purpose of 19.2.100.66 NMAC is to establish minimum procedures for protecting the surface affected by operation and development activities on state oil and gas leases. 19.2.100.66 NMAC applies to all operations conducted after its effective date on state oil and gas leases, the surface of which is held in trust by the commissioner of public lands.

B. Operation Requirements:

(1) Surface trash and debris: All operators shall remove all surface trash and debris caused by their operations from the lease and shall keep such premises free and clear of such trash and debris. As used in 19.2.100.66 NMAC, "surface trash and debris" means all nonoperational and nonessential equipment resulting from the drilling and producing operation of oil and gas leases and includes, but is not limited to, garbage, rubbish, junk or scrap.

(2) Pits:

(a) Pits shall not be located in, or hazardously near, water drainages. Pits shall be constructed to prevent contamination of the surface and the subsurface by seepage or flowage; including, if necessary, lining with impermeable materials as provided by rules and regulations of the oil conservation division. Under no circumstances shall pits be used for disposal, dumping or storage of off-lease fluids. Subject to all applicable state and federal laws, and if the operator agrees to accept all liability therefore; garbage, junk, waste or other inorganic debris may be disposed of in the caliche or burn pit located on the side of the reserve pit when the reserve pit is reclaimed.

(b) All pits shall be fenced. The type of fence used must be specific to the class of livestock in the area. Fencing shall remain in place for the life of the pit and be maintained to keep livestock out. All fences shall be braced or constructed in such a manner as to keep wires tight with no sagging between posts. State land office personnel will inspect and, if necessary, notify operators or lessees of necessary repairs or requirements for maintaining the required condition of all fences associated with leases. Fencing shall comply with all other state and federal requirements.

(c) If a pit is lined, the liner shall be installed and maintained to prevent ingestion by livestock and wildlife.

(d) Drilling fluids and drill cuttings shall be disposed of in a manner to prevent contamination to the surface. Rules of the oil conservation division which relate to the disposal of drilling fluids and drill cuttings shall be complied with.

(3) Site Development:

(a) All access roads shall be built, maintained and reclaimed in accordance with 19.2.20 NMAC.

(b) All trees and wood over three inches in diameter removed for site preparation shall be disposed of on site as determined by the state land office.

(c) Where required by the federal Clean Water Act, other applicable federal or state law, or regulations promulgated pursuant thereto, production and storage tanks shall be surrounded with an earthen berm in compliance with such applicable law and regulations. In addition, such a berm may be required by the state land office if a particular tank has a history of repeated leaks.

(4) Spills:

(a) All new spills shall be treated and cleaned up immediately. All surface affected by such spills and leaks shall be reclaimed. Reclamation of the area involved shall be implemented in consultation with the state land office.

(b) All spills shall be reported in accordance with the regulations of the oil conservation division.

(5) Pipelines: If practicable, lines placed on top of the surface shall be placed to take advantage of existing roads or alongside other lines already on top of the ground. If regular maintenance and inspection by vehicle is necessary, and a permanent road required, the road shall be constructed and maintained in accordance with 19.2.20 NMAC. All other traffic shall be kept to a minimum.

C. Closeout and operation plan:

(1) A reclamation or operation plan may be submitted to the state land office for review. If approved, the plan shall substitute for the reclamation and operation requirements of 19.2.100.66 NMAC and 19.2.100.67 NMAC.

(2) The plan shall consist of reclamation and operation specifics for compliance with the regulations concerning reclamation and operations, with an additional section that sets out the schedule of implementation on a continuing basis during the life of the lease relative to operation, maintenance, spills, leaks, cleanup and revegetation.

D. Review and inspection:

(1) State land office personnel or oil conservation division personnel may, from time to time, recommend actions necessary to comply with reasonable use of the surface and prudent operator standards.

(2) These recommendations shall be made either to state land office administrators or the commissioner's office, or to the lessee directly.

E. Exemptions and appeal procedure:

(1) The commissioner, or the commissioner's qualified designated representative, may grant an exemption to any or all of the requirements of this rule when a lessee provides a state land office approved reclamation or operation plan, or demonstrates that compliance would be impracticable or has occurred naturally. Any such exemption granted shall be in writing addressed to the lessee or operator requesting the exemption.

(2) Any lessee or operator aggrieved or adversely affected by a determination or interpretation of the state land office under 19.2.100.66 NMAC may, within 60 days of the receipt of such determination or interpretation, request a hearing before the commissioner of public lands. Within 30 days after receiving such a request, the commissioner shall convene a hearing at which the lessee or operator and the commissioner's staff may present evidence. Within 15 days of the hearing, the commissioner shall enter the commissioner's decision on the matter. Any decision of the commissioner may be appealed pursuant to Section 19-10-23 NMSA 1978.

[19.2.100.66 NMAC - Rp, 19.2.100.66 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.67 SURFACE RECLAMATION ON STATE OIL AND GAS LEASES:

A. Purpose and application of 19.2.100.67 NMAC:

(1) The purpose of 19.2.100.67 NMAC is to establish minimum procedures to follow in reclaiming surface disturbances resulting from development and production on state oil and gas leases, the surface of which is held in trust by the commissioner of public lands.

(2) 19.2.100.67 NMAC applies to areas disturbed by operations conducted under all existing and future leases. However, current lessees will not be held responsible for reclaiming areas disturbed under a lease which has previously expired or been terminated and for which the current lessee is not a successor-in-interest. Also, a prudent operator standard will be applied to the reclamation of other conditions existing on the effective date of this rule. In this regard, lessees are expected to comply with all requirements concerning removal of debris and improvements; however, specific requirements relating to ripping and reseedling will be developed by consultation and planning between the lessee and the state land office, using accepted industry standards such as those established by the bureau of land management.

B. Definitions, as used in 19.2.100.67 NMAC:

(1) "temporary abandonment" occurs if a well is no longer usable for beneficial purposes; has been continuously inactive for more than one year; and has been approved for temporary abandonment by the oil conservation division.

(2) "permanent abandonment" occurs if a well is no longer usable for beneficial purposes; has been continuously inactive for more than one year; and has not been approved for temporary abandonment by the oil conservation division.

C. Reclamation requirements:

(1) Surface sites and off-lease storage areas:

(a) Surface sites and off-lease storage areas, upon temporary or permanent abandonment, shall be cleared of junk and debris and, if necessary, be bermed or water-barred in order to stabilize the site and prevent erosion. Within one year of permanent abandonment, the sites and areas shall be ripped through to the underlying material and reseeded.

(b) Where available, topsoil removed from surface sites shall be stored for use in future reclamation of the site. Pads, within one year of permanent abandonment, shall have all caliche ripped through to the underlying material, any remaining stored topsoil replaced and the site reseeded.

(2) Roads: Roads shall be left in place only if authorized by the state land office. If any road is not needed, then, within one year of permanent abandonment, it shall be ripped, reseeded, bermed (closed) at the entrance, and water bars shall be constructed as directed or approved by the state land office. 19.2.20 NMAC shall be followed for specifics relating to road construction, maintenance and reclamation.

(3) Spills and leaks: Within one year of permanent abandonment, all surface affected by spills and leaks shall be reclaimed. Reclamation of the area involved shall be implemented in consultation with the state land office.

(4) Pits (operating/drilling and other):

(a) All pits, within one year of permanent abandonment or within a reasonable time of nonuse, shall be dried and leveled to restore as much of the original contour as is practical to minimize erosion. The pits shall be reseeded as required by this Section.

(b) All lining materials (plastics or otherwise) shall be removed from the surrounding area, cut off and permanently buried below the surface or removed from the area.

(5) Pipelines:

(a) Buried pipelines may be left in place and the surface ripped, water-barred and reseeded according to the specifics of the site.

(b) Within one year of permanent abandonment, surface lines shall be removed and the surface reclaimed as specified in Subparagraph (a) of Paragraph (5) of Subsection C of 19.2.100.67 NMAC.

(6) Debris: All oil and gas lease related surface trash and debris shall be removed upon temporary or permanent abandonment or disposed of in the manner permitted in 19.2.100.66 NMAC. As used in 19.2.100.67 NMAC, "surface trash and debris" means all nonoperational and nonessential equipment resulting from the drilling and producing operation of oil and gas leases and includes, but is not limited to, garbage, rubbish, junk or scrap.

(7) Revegetation:

(a) For all reseeding required by this Section, the state land office will approve seeding rates and seed mixtures, or approve site-specific recommendations. When possible, the state land office will recommend such approved rates and mixtures, but will not require seed varieties in its mixtures which are not in common use in the area.

(b) All required reseeding shall be planned and completed with a goal of revegetation consistent with local natural vegetation density. After a failed attempt to revegetate an area, a second reseeding may be required by the state land office, but in no event shall such second reseeding be required more than two years after the initial one.

(8) Lessee's Improvements: The lessee or operator shall remove all improvements placed or erected on the premises within 60 days after the expiration or termination of an oil and gas lease. Any improvements remaining at the end of such 60-day period shall be deemed abandoned for the purposes of Sections 19-7-14 and 19-10-28 NMSA 1978 and no payments shall be due for such remaining improvements pursuant to those Sections.

D. Release upon permanent abandonment and grant of access: Upon state land office approval and release, a lessee's reclamation responsibilities are terminated. The state land office shall issue a reclamation permit

for access to complete reclamation after expiration or termination of an oil and gas lease. The reclamation permit shall be a standard form developed after consultation with interested industry groups.

E. Closeout and operation plan:

(1) A reclamation or operation plan may be submitted to the state land office for review. If approved, the plan shall substitute for the reclamation and operation requirements of this Section and 19.2.100.66 NMAC.

(2) The plan shall consist of reclamation and operation specifics for compliance with the regulations concerning reclamation and operations, with an additional section that sets out the schedule of implementation on a continuing basis during the life of the lease relative to operation, maintenance, spills, leaks, cleanup and reseeded.

F. Exemptions and appeal procedure:

(1) The commissioner, or the commissioner's qualified designated representative, may grant an exemption to any or all of the requirements of 19.2.100.67 NMAC when a lessee provides a state land office approved reclamation or operation plan, or demonstrates that compliance would be impracticable or has occurred naturally. Any such exemption granted shall be in writing addressed to the lessee or operator requesting the exemption.

(2) Any lessee or operator aggrieved or adversely affected by a determination or interpretation of the state land office under 19.2.100.67 NMAC may, within 60 days of the receipt of such determination or interpretation, request a hearing before the commissioner of public lands. Within 30 days after receiving such a request, the commissioner shall convene a hearing at which the lessee or operator and the commissioner's staff may present evidence. Within 15 days of the hearing, the commissioner shall enter the commissioner's decision on the matter. Any decision of the commissioner may be appealed pursuant to Section 19-10-23 NMSA 1978.

G. Temporary provision - phase-in: Lessees or operators of leases which contain conditions existing on the effective date of 19.2.100.67 NMAC, otherwise requiring immediate reclamation under 19.2.100.67 NMAC, shall have five years to complete reclamation of such conditions if they demonstrate steady progress toward such completion pursuant to an approved reclamation plan or the requirements of 19.2.100.67 NMAC.

[19.2.100.67 NMAC - Rp, 19.2.100.67 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.68 AMENDMENT OF LEASE TO LOWER ROYALTY RATE FOR OIL WELLS UNDER CERTAIN CONDITIONS:

A. Purpose - eligibility: The records owner of an oil and gas lease issued by the commissioner of public lands whose lease is maintained in good standing according to the terms and conditions of the lease and all applicable statutes and regulations, may apply to the commissioner for an amendment to the lease for the purpose of changing the royalty rate on oil produced from a specified oil well. Any well that produces on a lease basis or as a communitized or unitized property is eligible for the lower rate. Multiple wells from the same lease, communitization or unit may be submitted for approval under one application. Communitized or unit wells must qualify individually for the lower royalty rate.

B. Application, requirements, and information to be furnished. An application for a change in royalty rate shall be on a form prescribed by the commissioner and shall be accompanied by the application fee as set forth in the schedule of fees. For each oil well, the application shall:

(1) show that the oil well has produced oil attributable to a communitization, unit or lease premises, and:

(a) if the production is from formations shallower than 5,000 feet, has produced less than an average of three barrels of oil per day during the preceding 12 months and has not averaged over five barrels per day for any month during the preceding 12 months; or

(b) if the production is from formations 5,000 feet deep or deeper, has produced less than an average of six barrels of oil per day during the preceding 12 months and has not averaged over 10 barrels of oil per day for any month during the preceding 12 months; and

(2) include a statement that to the best of the applicant's knowledge and experience the well is not capable of sustained production limits specified in Paragraph (1) of this Subsection.

(3) provide data and describe efforts to:

(a) negotiate lower rates paid to other royalty owners and overriding royalty owners in the oil well; and

(b) minimize the costs of operating the well; and

(4) include any other fact which may justify a lower royalty rate.

C. Commissioners approval. Upon receipt of an application, the commissioner shall review the information submitted as well as other, independent information obtained by the commissioner and shall agree to amend the lease to a lower royalty rate for oil produced from the oil well if, in the commissioner's sole discretion, the commissioner finds that:

- (1) the operator has taken reasonable steps to minimize the operator's costs of operating the oil well;
- (2) the oil well will likely be plugged and abandoned in the near future, with a resulting loss of reserves, if operating costs are not reduced further;
- (3) the oil well will produce for a longer period, and the amount of oil produced will ultimately be larger, if the royalty rate is lowered; and
- (4) a lower royalty rate will actually maximize revenue to the trust beneficiaries.

D. Applicable royalty rate, effective date. The lower royalty rate agreed to under this Section shall be equal to five percent and, except as provided in Subsection G of this Section, shall be valid for a period of three years, after which time the record owner of the oil and gas lease may submit a written request for an extension which, if approved pursuant to Subsection C of this Section, shall be valid for an additional three year term.

E. Accounting and reporting of oil royalties. Production, royalties and taxes for oil produced from any well for which a lower royalty rate has been granted under this Section shall be reported separately from other oil wells, under the PUN-lease business rules of the oil and gas royalty filer's kit utilized by the oil and natural gas administration and revenue database (ONGARD) system.

F. Form of application. Applications for a lower royalty rate under this Section shall be submitted on a form provided by the commissioner.

G. Termination of lower rate. The effective period for a lower royalty rate, approved pursuant to this Section, shall terminate and the royalty rate specified in the lease shall be applicable if the commissioner determines, in the commissioner's sole discretion, that the oil production has significantly increased through well workover, recompletion or other means, so that the well would no longer qualify on an annual basis for a lower royalty rate. [19.2.100.68 NMAC - Rp, 19.2.100.68 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.69 PAYMENT OF STATE ROYALTIES:

A. Objective and application:

(1) This Section shall apply to oil and condensate ("oil kind") and natural gas and natural gas products ("gas kind") produced and saved from state oil and gas leases and marketed or utilized in any manner.

(2) In order to ensure that all royalties have been paid, to properly account for all revenues, to promote uniformity of accounting and reporting, to provide for the most efficient management of state oil and gas leases and to comply with the intent and letter of New Mexico law, it is the policy of the state land office that royalties owed under state oil and gas leases be paid monthly on all production deemed to be produced from each state lease during that month.

(a) Gas kind:

(i) Payment on entitlement basis. For leases included in mixed agreements or in units or communitized tracts which do not contain uniform royalty rates or uniform beneficiaries, gas kind royalties shall be paid monthly on the production allocated to each lease under the unit or communitization agreement on the entitlement basis.

(ii) Payment on takes basis. For individual producing leases or state leases within one hundred percent state agreements which contain leases with uniform royalty rates and uniform beneficiaries, gas kind royalties shall be paid monthly on all production deemed to be produced from the lease on a takes basis.

(b) Oil kind: royalties on oil production are based on each working interest owner's proportionate share of production from the lease, unit or communitization agreement. As a result, no problem exists with regard to the current process for paying such royalties.

(3) As stated above, the purpose of this Section is to ensure that all royalties due under state oil and gas leases are paid and accounted for in a timely manner. Nothing herein relieves any lessee of record, operator, working interest owner or other person of any legal obligation to pay royalties. The commissioner of public lands reserves the right to seek payment of any deficient royalties from any such person.

(4) Effective Date. This policy will become effective six months after the effective date of this Section (the "effective date").

B. Gas deemed to be produced from state leases within mixed agreements or units or communitized tracts which do not contain uniform royalty rates or uniform beneficiaries:

(1) For gas deemed to be produced from state leases in mixed agreements or in units or communitized tracts which do not contain uniform royalty rates or uniform beneficiaries, gas kind royalties must be paid on each working interest owner's entitled share of the produced volume from the agreement. If the working interest owner did not take any gas from the agreement, the value of the entitled share of production for royalty purposes shall be the benchmark entitlement value.

(2) Lessees in a unit or communitized tracts may contractually agree to assign reporting and payment responsibility among themselves in any manner which insures that entitled royalty volumes allocable to state leases are reported and paid each month.

C. Gas deemed to be produced from individual leases and one hundred percent state agreements which contain leases with uniform royalty rates and uniform beneficiaries:

(1) For leases producing on an individual basis or on one hundred percent state agreements which contain leases with uniform royalty rates and uniform beneficiaries, royalties are due on all of the natural gas and natural gas products deemed to be produced. Unless notice has been given to the state land office under the following paragraph, royalties will be paid by each working interest owner on the amount of natural gas and natural gas products actually taken and sold by such owner. Any notices of volume variances shall be sent to the property operator of the lease.

(2) Upon written notification to the state land office by the property operator that all interest owners in the property have elected to pay gas kind royalties on an entitlements basis, notice of volume variances will be sent to those working interest owners who are entitled to the production, as shown by state land office records. If a working interest owner does not sell all of the production to which the working interest owner is entitled, then royalty payments on such untaken but entitled share are to be paid on the benchmark entitlement value. Failure to remit royalties based on benchmark entitlement value will result in assessments being issued and interest charges being assessed for the underpaid amount.

D. Adjustments of prior periods:

(1) Adjustments of prior period reports for under-reported or over-reported volumes made necessary by the promulgation of this Section shall be completed within 18 months from the effective date. Adjustments must be reported by specific time period for each affected property. The state land office may grant specific remitters an extension of this deadline for good cause.

(2) In making adjustments under this subsection, a remitter shall report the difference between the take and the entitlement basis volumes or vice-versa on a production month basis for each affected property.

(a) For convenience, a remitter may group volume differences on a calendar year basis, at the mid-point of the year, and apply a product valuation to the volume difference which is representative of the weighted average product values for that year. Such volume differences for the past will be reported as detail line entries into the ONGARD system in the PUN-lease format, etc., on the appropriate forms adopted and made available by the commissioner in accordance with Section 19.2.100.70 NMAC.

(b) In the alternative, a remitter may make a one-time cumulative adjustment for all past periods for each affected property by providing to the state land office a valuation proposal which estimates a fair average value of gas under-reported or over-reported for the period during which the imbalance occurred for the affected properties. Upon approval of such valuation proposal, or upon agreement of the remitter and the state land office to utilize different values, the remitter may make adjustments on the basis of such valuations.

(3) Irrespective of any applicable statute of limitations, credits for previously over-reported natural gas volumes may be taken if:

(a) the adjustment is caused by the promulgation of this section by the state land office;

(b) the adjustment is made within the time period specified in Paragraph 1 of this Subsection; and,

(c) the credit is taken for subsequent royalties owed on the same production unit number (property) for which the volumes were over reported or any other property with the same trust beneficiary as the affected property.

E. Definitions:

(1) "average value received" means the value required by law to be used for the calculation of royalties.

(2) "benchmark entitlement value" means:

(a) An amount equal to the average value received by the working interest owner for production from: the unit or communitized area; or state leases within one hundred percent state units or

communitized areas where entitlements are elected under Paragraph (2) of Subsection C of 19.2.100.69 NMAC; or, individual state leases where entitlements are elected under Paragraph (2) of Subsection C of 19.2.100.69 NMAC, in which the working interest owner's production is located during the production month, so long as the working interest owner took at least fifty percent of its entitled share of production for their unprocessed or processed gas. In the event that this Subparagraph (a) is not applicable, then the benchmark entitlement value shall be:

(b) In the event that the working interest owner sold less than fifty percent of its entitled share, or sold no gas from: the unit or communitized area; or, state leases within one hundred percent state units or communitized areas where entitlements are elected under Paragraph (2) of Subsection C of 19.2.100.69 NMAC; or, individual state leases where entitlements are elected under Paragraph (2) of Subsection C of 19.2.100.69 NMAC, the value of the untaken but entitled share shall equal the average value received by the working interest owner for like quality gas produced in the same producing basin in that production month for their unprocessed or processed gas. In the event that Subparagraphs (a) or (b) do not apply, then the benchmark entitlement value shall be:

(c) In the event that the working interest owner does not take any like quality gas in the same producing basin during a production month, the benchmark entitlement value shall be a valid index price, less a location differential, multiplied by the total mmbtu's produced at the field for unprocessed gas or similar index prices, less a location differential, multiplied by the mmbtu's produced applicable to the residue gas portion, plus a valid index price for natural gas liquids, less an estimated processing deduction for the portion of the processed gas converted to equivalent mmbtu value, and less a location differential, multiplied by the mmbtu's produced applicable to such natural gas liquids portion.

(3) "Like quality gas" means gas produced from the same pool, as defined by the New Mexico oil conservation division from time to time.

(4) "Location differential" shall be equal to the costs incurred by the working interest owner to move gas from the field to the index point in the most recent month of production.

(5) "Valid index price" means:

(a) in the case of natural gas, an average of two or more price indices for interstate pipelines transporting natural gas from producing regions that are located entirely or partially within New Mexico, based on acceptable survey techniques, appearing in a publication recognized in the oil and gas industry as a reputable source of such price information (e.g., *Inside FERC*, *Gas Daily*, *Natural Gas Weekly*).

(b) in the case of natural gas liquids, the price for individual products produced from natural gas (e.g. ethane, propane, butanes (iso- and normal), natural gasoline, etc.) based on acceptable survey techniques, appearing in a publication recognized in the oil and gas industry as a reputable source of such price information (e.g., *Oil Price Information Service*).

[19.2.100.69 NMAC - Rp, 19.2.100.69 NMAC, 6/30/2016; A, 6/11/2019]

[The effective date of 19.2.100.69 NMAC is December 30, 1995.]

19.2.100.70 REPORTING AND ROYALTY RENDITION FORMS: When oil and gas royalties are or should be remitted, as described in 19.2.100.57 NMAC, the remitting person or company shall submit to the state land office a remittance document and royalty reporting form adopted and made available by the commissioner in accordance with the instructions for completing the remittance document and royalty reporting form.

[19.2.100.70 NMAC - Rp, 19.2.100.70 NMAC, 6/30/2016]

19.2.100.71 TEMPORARY SHUT-IN OF OIL WELLS DUE TO SEVERE REDUCTION IN THE PRICE OF OIL:

A. Basis for allowing shut in of oil wells: Pursuant to Section 19-10-6 NMSA 1978, the commissioner has determined that, because of a severe reduction in the price of oil, the beneficiaries of state trust lands will be better served if oil wells are allowed to be temporarily shut in rather than produced at a low price.

B. Effective period:

(1) Unless extended by the commissioner after a subsequent notice and public hearing or terminated sooner by a subsequent regulation of the commissioner after finding that the price of oil is no longer severely reduced, 19.2.100.71 NMAC shall remain in effect for a period of one year from the effective date of this rule.

(2) Any termination of 19.2.100.71 NMAC before one year from the effective date of this rule shall not be effective until 30 days after the commissioner has by certified mail sent notice of such prospective termination to each lessee whose lease is being extended by the operation of this section.

C. Any oil and gas lease issued by the commissioner of public lands and maintained in good standing according to the terms and conditions thereof and all applicable statutes and regulations shall not expire if:

(1) There is at least one well capable of producing oil located upon some part of the lands included in the lease and all such wells are shut in because of the severe reduction in the price of oil;

(2) The lessee timely notifies the commissioner in writing, within 30 days of the date all oil wells capable of producing have been shut in, with the following information: the API (american petroleum institute well number), the well name and number, the lease number, the date the well was shut in, and the date the last well on the lease was shut in. Notice may be filed via electronic mail to oilSIRnotice@slo.state.nm.us or may be mailed to the state land office. Said notice shall be accompanied by a form C-103 filed with the oil conservation division or other written oil conservation division approval of the shut-in for each well shut in; and

(3) The lessee timely pays an annual shut-in royalty within 90 days from the date all wells capable of producing oil have been shut in and thereafter before each anniversary of such date. Each payment remitted under this section shall accompany a form made available by the commissioner which shall specify the shut-in well, along with other applicable information. The amount of the shut-in royalty shall be twice the annual rental due by the lessee under the terms of the lease but not less than three hundred twenty dollars (\$320) per well per year, the fee established by the state legislature in Section 19-10-6 NMSA 1978. If the other requirements of this subsection are satisfied, the timely payment of the shut-in royalty shall be considered for all purposes the same as if oil were being produced in paying quantities until the next anniversary of the date the well was first shut in; provided, that this rule continues to be in effect.

(a) A state land office lease may be maintained in effect by virtue of one or more wells located within an area covered by a unit agreement where all such wells have been temporarily shut in pursuant to this rule. For such shut-in wells located on a state land office lease, the lessee of each state lease maintained in effect by virtue of such wells shall pay royalty per well calculated by multiplying the base shut-in royalty that would be due for that lease by the percentage of acreage of that lease within the area; but in no event shall the lessee pay less than three hundred twenty dollars (\$320) per well per year.

(b) A state land office lease may be maintained in effect by virtue of one or more wells located within an area covered by a communitization agreement, or constituting a pooled unit or cooperative area, where all such wells have been temporarily shut in pursuant to this rule. The lessee of the largest state lease within the communitized area shall pay the base shut-in royalty due for that lease; but in no event shall the lessee pay less than three hundred twenty dollars (\$320) per well per year.

(c) If the date when a shut-in royalty payment is due falls on a Saturday, Sunday or legal state or federal holiday, the shut-in royalty may be timely paid if received on the next calendar day which is not a Saturday, Sunday or holiday

(d) Under the standard business practice of the state land office, the date that the state land office stamps or otherwise marks the shut-in royalty payment or check establishes the date of actual receipt by the state land office.

D. If the lessee fails to timely comply with the requirements of Subsection C of 19.2.100.71 NMAC, no action by the commissioner or the state land office may ratify, re-grant or revive the expired lease or estop the commissioner from treating the lease as expired, unless such relief is granted expressly in writing signed by the commissioner.

E. Lessees utilizing the temporary shut-in provisions of this rule, and assignees of any lease that is maintained in effect by virtue of this rule, remain fully responsible for compliance with all laws, regulations of the state land office and other state agencies, and lease terms regarding operations on the leased premises, including with respect to environmental protection. Lessees shutting in under this rule, and assignees of any lease that is maintained in effect by virtue of this rule, shall remain subject to all present state land office bonding requirements, and shall be subject to any future bonding requirements upon adoption. No lessee whose actions or omissions have caused expenditures to be made from the state trust lands restoration and remediation fund may shut in under the provisions of this rule until that lessee has reimbursed the state trust lands restoration and remediation fund in the amount of the expenditure.

F. Under no circumstances will the commissioner refund any portion of the shut-in royalty paid for a shut-in well up to the amount required by Subsection C of 19.2.100.71 NMAC.

G. Upon the termination of 19.2.100.71 NMAC, automatically or by action of the commissioner, a lease maintained in effect by payment of shut-in royalty shall expire unless there is actual production in paying quantities within 90 days thereafter, unless the time is further extended, in writing, on an individual lease basis, upon request at the discretion of the commissioner; provided that if the commissioner shortens the effective period of this

rule to less than one year pursuant to Subsection B of 19.2.100.71 NMAC, a lease maintained in effect by payment of shut-in royalty shall expire unless there is actual production in paying quantities within 120 days thereafter.
[19.2.100.71 NMAC, Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 6/30/2016; 19.2.100.71 NMAC - N, 10/31/2016; A/E, 4/22/2020; A, 8/11/2020]

19.2.100.72 [RESERVED]

[19.2.100.72 NMAC, Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 6/30/2016]

19.2.100.73 [RESERVED]

[19.2.100.73 NMAC, Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 6/30/2016]

19.2.100.74 [RESERVED]

[19.2.100.74 NMAC - Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 6/30/2016]

19.2.100.75 [RESERVED]

[19.2.100.75 NMAC - Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 6/30/2016]

19.2.100.76 [RESERVED]

[19.2.100.76 NMAC - Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 6/30/2016]

19.2.100.77 [RESERVED]

[19.2.100.77 NMAC - Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 6/30/2016]

19.2.100.78 [RESERVED]

[19.2.100.78 NMAC - Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 6/30/2016]

HISTORY of 19.2.100 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, filed 9/2/1969.

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

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

Rule 1, Relating to Oil and Gas Leases, filed 3/11/1981.

SLO Rule 1, Relating to Oil and Gas Leases, filed 1/20/1984.

SLO Rule 1, Relating to Oil and Gas Leases, filed 6/24/1985.

History of Repealed Material:

19.2.100 NMAC, Relating to Oil and Gas Leases, re-numbered 12/13/2002; repealed 6/30/2016.