

# DEPARTMENT OF NATURAL RESOURCES



## PROPOSED CHANGES TO REGULATIONS

**11 AAC 03**

**Disposition of Royalty Oil, Gas, or Gas Liquids**

**11 AAC 83**

**Oil and Gas Leasing**

**11 AAC 89**

**Exploration Incentive Credit**



## PUBLIC REVIEW DRAFT

**March 1, 2017**

**COMMENT PERIOD ENDS: April 6, 2017.**  
**Please see public notice for details about how to comment**  
**on these proposed changes.**

**Notes to reader:**

1. Except as discussed in note 2, proposed new text that amends an existing regulation is **bolded and underlined**.
2. If the lead-in line states that a new section, subsection, paragraph, subparagraph, or clause is being added, or that an existing section, subsection, etc. is being repealed and readopted (replaced), the new (or replaced) text is not bolded or underlined.
3. [ALL-CAPS TEXT WITHIN BRACKETS] indicates text that is proposed to be deleted.
4. When the word “including” is used, Alaska Statutes provide that it means “including, but not limited to.”

**Title 11, Alaska Administrative Code, Chapter 03, Disposition of Royalty Oil, Gas, or Gas Liquids**

11 AAC 03.040 is amended to read:

**11 AAC 03.040. Notification to royalty board.** If the commissioner intends to waive competitive bid, he will notify the Alaska Royalty Oil and Gas Development Advisory Board by having a copy of the proposed written determination delivered personally, **sent by electronic mail with return receipt** or sent by certified mail, to each member of the royalty board. (Eff. 12/12/80, Register 76; **am \_\_\_ / \_\_\_ / \_\_\_ , Register \_\_\_\_\_**)

**Authority:** AS 38.05.020 AS 38.05.183

**Title 11, Alaska Administrative Code, Chapter 83, Oil and Gas Leasing**

11 AAC 83.241(a) is amended to read:

**11 AAC 83.241. Production tax lease allowance.** (a) The production tax lease allowance for purposes of 11 AAC 83.240(b) is the greater of zero or the amount calculated by subtracting the tax credits, if any, under (b) of this section from **the production tax before**

**credits. The production tax before credits is defined as** the greater of the following two amounts:

(1) the sum of **either (A) or (B), depending on the month of production, and**

**(C).**

(A) **For a month before \_\_\_\_\_ 2017,** the monthly production tax net revenue under (c) of this section multiplied by the net profit deductibility factor under (e) of this section multiplied by

(i) 22.5 percent, for a month before July 2007;

(ii) 25 percent, for a month after June 2007 and before January

2014; or

(iii) 35 percent, for a month after December 2013; and

(B) **After \_\_\_\_\_ 2017, 35 percent multiplied by the amount resulting from subtracting (ii) from (i):**

**(i) the net profit deductibility factor under (e) of this section multiplied by the amount resulting from subtracting the royalty payments under 11 AAC 83.242 and the amounts defined in paragraphs (1) and (2) under (c) of this section from the production revenue under 11 AAC 83.222;**

**(ii) for oil and gas that meet one or more criteria in AS 43.55.160(f) and have not expired under AS 43.55.160(f), 0.2 multiplied by the lessee's production revenue under 11 AAC 83.222 generated from that oil and gas net of the corresponding royalty payments under 11 AAC 83.242 multiplied by the net credit augmentation rate under (f)(1) of this section.**

**(C)** the lease-allocated tax based on price index under (d) of this section;

(2) the product of

(A) the percentage rate that would be applicable under AS 43.55.011(f)(1)

— (5) if the phrase “calendar year” were replaced by the phrase “month of production,” based on the average spot price during the month as calculated under 15 AAC 55.171(m) for ANS; and

(B) the production revenue under 11 AAC 83.222 less the royalty owed to the state under 11 AAC 83.242.

11 AAC 83.241(b) is amended to read:

**11 AAC 83.241. Production tax lease allowance.**

(b) The tax credits for purposes of (a) of this section are

(1) for a month before \_\_\_\_\_ 2017, the product of (A) and (B). After \_\_\_\_\_ 2017, the minimum of the production tax before credits under (a) of this section and the amount resulting from the product of (A) and (C).

(A) the fraction obtained by dividing the amount of oil and gas in Btu-equivalents produced by the lessee from the NPSL during the month and taxable under AS 43.55.011(e), by the amount of Btu-equivalents of oil and gas produced by the lessee statewide during the month and taxable under AS 43.55.011(e); [AND]

(B) 1/12 of the maximum amount of the tax credit for the calendar year calculated under AS 43.55.024(c)(1) or (2), as applicable, but substituting in that calculation the lessee's average amount of oil and gas in Btu-equivalents, as defined in 11 AAC 83.295, produced a day statewide during the month and taxable under AS 43.55.011(e), for the lessee's average amount of oil and gas in BTU equivalent barrels, as

defined in AS 43.55.900, produced a day statewide during the calendar year and taxable under AS 43.55.011(e);

**(C) the product of the net credit augmentation rate under (f)(2) of this section and 1/12 of the maximum amount of the tax credit for the calendar year calculated under AS 43.55.024(c)(1) or (2), as applicable, but substituting in that calculation the lessee's average amount of oil and gas in Btu-equivalents, as defined in 11 AAC 83.295, produced a day statewide during the month and taxable under AS 43.55.011(e), for the lessee's average amount of oil and gas in BTU equivalent barrels, as defined in AS 43.55.900, produced a day statewide during the calendar year and taxable under AS 43.55.011(e);**

(2) for a month after December 2013 **and before January 2017, the amount resulting from subparagraph (A). For a month after December 2016 and before \_\_\_\_\_ 2017, the amount resulting from subparagraph (B). After \_\_\_\_\_ 2017, the minimum of the amounts resulting from subparagraphs (C) and (D).**

**(A) the product of \$5 and the number of barrels, if any, of oil, other than state royalty oil, produced from the NPSL during the month that meets one or more of the criteria in AS 43.55.160(f);**

**(B) the product of \$5 and the number of barrels, if any, of oil, other than state royalty oil, produced from the NPSL during the month that meets one or more of the criteria in AS 43.55.160(f) and have not expired under AS 43.55.160(f)**

**(C) the production tax before credits under (a) of this section less the amount resulting from paragraph (1) of this subsection;**

**(D) the product of the net credit augmentation rate under (f)(2) of this section, \$5, and the number of barrels, if any, of oil, other than the state royalty oil, produced from the NPSL during the month that meets one or more criteria in AS 43.55.160(f) and have not expired under AS 43.55.160(f).**

(3) for a month after December 2013 **and before** \_\_\_\_\_ **2017**, the smaller of **(A) and (C). After** \_\_\_\_\_ **2017, the smaller of (B) and (C).**

(A) the product of the number of barrels, if any, of oil, other than state royalty oil, produced from the NPSL during the month that does not meet any of the criteria in AS 43.55.160(f) and the dollar per barrel amount that would be applicable under AS 43.55.024(j)(1) – (9), if the phrase “average gross value at the point of production” were replaced by the phrase “NPSL production revenue under 11 AAC 83.222 attributable to oil other than state royalty oil, divided by the number of barrels of oil, other than state royalty oil, produced from the NPSL”; or

**(B) the product of the net credit augmentation rate under (f)(2) of this section, the number of barrels, if any, of oil, other than state royalty oil, produced from the NPSL during the month that does not meet any of the criteria in AS 43.55.160(f) and the dollar per barrel amount that would be applicable under AS 43.55.024(j)(1) – (9), if the phrase “average gross value at the point of production” were replaced by the phrase “NPSL production revenue under 11 AAC 83.222 attributable to oil other than state royalty oil, divided by the number of barrels of oil, other than state royalty oil, produced from the NPSL”;**

**(C)** the greater of zero, or the following amount:

A minus B minus C, where

“A” equals the greater of the amounts calculated under (a)(1) and (2) of this section;

“B” equals the total amount of tax credits under (1) and (2) of this subsection; and

“C” equals the amount calculated under (a)(2) of this section.

11 AAC 83.241(c) is amended to read:

**11 AAC 83.241. Production tax lease allowance.**

(c) For purposes of 11 AAC 83.209(b) and (a) of this section, the monthly production tax net revenue equals the lessee's production revenue under 11 AAC 83.222 net of the lessee's royalty payments under 11 AAC 83.242, except that for a month after December 2013, the lessee's production revenue under 11 AAC 83.222 net of the lessee's royalty payments under 11 AAC 83.242 is **only for purposes of (a) of this section** multiplied by 0.8 for oil and gas that meet one or more of the criteria in AS 43.55.160(f) **and have not expired under AS 43.55.160(f)** less the following amounts:

(1) the lessee's direct operating costs during the month under 11 AAC 83.240, excluding the production tax lease allowance under (a) of this section and abandonment costs allowed under 11 AAC 83.240(e); however, if the NPSL is within a unit subject to AS 43.55.165(j), for purposes of the calculation under this paragraph the lessee's direct operating costs during the month are replaced by one-ninth of the lessee's direct operating costs during the period April 1, 2006, through December 31, 2006, multiplied by the following factor:

(A) 1.03 for a month in 2007;

(B) 1.061 for a month in 2008;

(C) 1.093 for a month in 2009; and

(2) the lessee's development costs under 11 AAC 83.219 incurred during the month less the product of \$.30 multiplied by the amount of the lessee's working interest Btu-equivalents of oil and gas produced from the NPSL during the month, including any overriding royalty share of oil and gas but not including the state's royalty share of oil or gas.

11 AAC 83.241 is amended by adding a new subsection to read:

**11 AAC 83.241. Production tax lease allowance.**

(f) For the purposes of

(1) subsection (a) of this section, if

(A) the development account beginning debit balance less the monthly production tax net revenue under (c) of this section, if any, is positive; or

(B) if the month of production is before \_\_\_\_\_ 2017;

then the net credit augmentation rate is equal to 1 for that month. Otherwise, the net credit augmentation rate is calculated according to the following formula:

$$\text{NCAR} = 1 / (1 - (.35 * \text{NPR})), \text{ where}$$

“NCAR” equals the net credit augmentation rate; and

“NPR” equals the net profit share defined in the lease expressed as a fixed percentage of the net profit payment account.

(2) subsection (b) of this section, if

(A) the development account beginning debit balance less the monthly production tax net revenue under (c) of this section, if any, is positive; or

(B) if the month of production is before \_\_\_\_\_ 2017; or



(C) the production tax before credits under (a) of this section is no greater than the amount resulting from (a)(2),

then the net credit augmentation rate is equal to 1 for that month. Otherwise, the net credit augmentation rate is calculated according to the following formula:  $NCAR = 1 / (1 - (.35 * NPR))$ .

(Eff. 2/13/2010, Register 193; am 1/9/2014, Register 209; am \_\_\_ / \_\_\_ / \_\_\_, **Register** \_\_\_\_\_)

**Authority:** AS 38.05.020 AS 38.05.180

11 AAC 83.245(g) is amended to read:

**11 AAC 83.245. Reporting and payment requirements.**

(g) Not later than May 14, 2010, each lessee shall file amended NPSL reports under this section covering each month after 2006 for which an item described in (b)(1) – (5) of this section is affected by the retroactive application of a provision listed in 11 AAC 83.290, as that section read on \_\_\_\_\_, 2017.

(Eff. 11/9/79, Register 72; am 8/15/82, Register 83; am 2/13/2010, Register 193; am 1/9/2014, Register 209; am \_\_\_ / \_\_\_ / \_\_\_, **Register** \_\_\_\_\_)

**Authority:** AS 38.05.020 AS 38.05.180

**Editor's note:** Forms and instructions for making NPSL payments, and filling NPSL reports and supporting documentation required to comply with 11AAC 83, can be obtained at the Anchorage office of the Department of Natural Resources, Division of Oil and Gas, 550 West 7<sup>th</sup> Avenue, Suite 1100, or can be found on the department's website at [www.dog.dnr.alaska.gov/Royalty/ReportingInstructions.htm](http://www.dog.dnr.alaska.gov/Royalty/ReportingInstructions.htm).

**Authority:** AS 38.05.020

AS 38.05.180

11 AAC 83.250(a) is amended to read:

**11 AAC 83.250. Lessee protests.** (a) A lessee who disagrees with and wishes to protest the commissioner's redetermination issued under 11 AAC 83.247, shall file a written protest with the department. To preserve the lessee's rights and to receive consideration by the department, this written protest must

(1) be filed within 60 days after the [MAILING] date of the department's notice of redetermination with which the lessee disagrees or is aggrieved;

(2) be mailed, **electronically mailed,** or personally delivered to: Office of the Commissioner, Alaska Department of Natural Resources, **550 W. 7<sup>th</sup> Avenue, Suite 1400, Anchorage, AK 99501, or DNRappeals@alaska.gov** [P.O. BOX M, JUNEAU, ALASKA 99811].

(3) state what action by the department it is that the lessee is protesting and what relief the lessee seeks;

(4) state the grounds for the lessee's protest, including the facts (if any) at issue, the legal authority (statutes, regulations and case law), and any generally accepted accounting principles that support the lessee's protest;

(5) state whether the lessee wants an informal conference or waives its right to an informal conference in favor of a formal hearing.

(Eff. 11/9/79, Register 72; am 2/13/2010, Register 193; **am \_\_\_ / \_\_\_ / \_\_\_ , Register**

**\_\_\_\_\_**)

**Authority:** AS 38.05.020

AS 38.05.180

11 AAC 83.255(b) is amended to read:

**11 AAC 83.255. Formal hearings.**

(b) A lessee's request to continue its protest at a formal hearing after the department has acted on the conference officer's recommendation regarding that protest must

(1) be mailed, **electronically mailed, or hand delivered** to: Office of the Commissioner, Alaska Department of Natural Resources, **550 W. 7<sup>th</sup> Avenue, Suite 1400, Anchorage, AK 99501, or DNRhearings@alaska.gov** [P.O. BOX M, JUNEAU, ALASKA 99811];

(2) state the nature of the lessee's continuing protest and the relief sought;

(3) state the grounds for the lessee's protest, including the facts (if any) remaining at issue, the legal authority (statutes, regulations, or case law) and any generally accepted accounting principles that support the lessee's protest.

(Eff. 11/9/79, Register 72; **am / / , Register** )

**Authority:** AS 38.05.020 AS 38.05.180

11 AAC 83.290 is amended to read:

**11 AAC 83.290. Retroactive application of regulations. (a) Except as otherwise provided, the** [THE] following provisions apply retroactively to April 1, 2006:

(1) 11 AAC 83.209(b)

(2) 11 AAC 83.212(b)(2);

(3) 11 AAC 83.220;

(4) 11 AAC 83.240(b)(4)(B);

(5) 11 AAC 83.241 (a)-(e), except as amended effective \_\_\_\_\_, \_\_\_\_\_, 2017;

(b) The provisions of 11 AAC 83.241(c), as amended effective \_\_\_\_\_, \_\_\_\_\_, 2017, apply retroactively to January 1, 2017.

(Eff. 2/13/2010, Register 193; am 1/9/2014, Register 209; am \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_, Register \_\_\_\_\_)

<b>Authority:</b>	Sec 72, ch. 1,	<u>Sec 41, ch. 4</u>	<u>Sec 38, ch. 4</u>
	SSSLA 2007	<u>4 SSLA 2016</u>	<u>4 SSLA 2016</u>
	AS 38.05.020	AS 38.05.180	

**Title 11, Alaska Administrative Code, Chapter 89, Exploration Incentive Credit.**

11 AAC 89.010 is repealed:

**11 AAC 89.010. Applicability; purpose.** Repealed. (Eff. 9/22/95, Register 135; repealed \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_, Register \_\_\_\_\_)

<b>Authority:</b>	<u>Sec 33, ch. 4</u>	AS 41.09.010	AS 41.09.020
	<u>4 SSLA 2016</u>		

11 AAC 89.015 is repealed:

**11 AAC 89.015. Eligible project.** Repealed. (Eff. 9/22/95, Register 135; repealed \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_, Register \_\_\_\_\_)

<b>Authority:</b>	<u>Sec 33, ch. 4</u>	AS 41.09.010	AS 41.09.020
	<u>4 SSLA 2016</u>		

11 AAC 89.017 is repealed:

**11 AAC 89.017. Application.** Repealed. (Eff. 9/22/95, Register 135; **repealed**

**/    /    , Register    )**

**Authority:** **Sec 33, ch. 4** AS 41.09.010 AS 41.09.020

**4 SSLA 2016**

11 AAC 89.020 is repealed:

**11 AAC 89.020. Grant of maximum credit.** Repealed. (Eff. 9/22/95, Register 135;

**repealed    /    /    , Register    )**

**Authority:** **Sec 33, ch. 4** AS 41.09.010 AS 41.09.020

**4 SSLA 2016**

11 AAC 89.030 is repealed:

**11 AAC 89.030. Inspection; report.** Repealed. (Eff. 9/22/95, Register 135; **repealed**

**/    /    , Register    )**

**Authority:** **Sec 33, ch. 4** AS 41.09.010 AS 41.09.020

**4 SSLA 2016**

11 AAC 89.040 is repealed:

**11 AAC 89.040. Extension and adjustment of maximum credit.** Repealed. (Eff.

9/22/95, Register 135; **repealed    /    /    , Register    )**

**Authority:** **Sec 33, ch. 4** AS 41.09.010 AS 41.09.020

**4 SSLA 2016**

11 AAC 89.050 is repealed:

**11 AAC 89.050. Allocation; assignment.** Repealed. (Eff. 9/22/95, Register 135;  
**repealed / / , Register** )

**Authority:** AS 41.09.010 AS 41.09.020

11 AAC 89.060 is repealed:

**11 AAC 89.060. Audit.** Repealed. (Eff. 9/22/95, Register 135; **repealed / / ,**  
**Register** )

**Authority:** **Sec 33, ch. 4** AS 38.05.035 AS 41.09.020  
**4 SSLA 2016** AS 41.09.010 AS 41.09.090

11 AAC 89.090 is repealed:

**11 AAC 89.090. Supplementation and correction of data.** Repealed. (Eff. 9/22/95,  
Register 135; **repealed / / , Register** )

**Authority:** **Sec 33, ch. 4** AS 41.09.010 AS 41.09.090  
**4 SSLA 2016** AS 41.09.020

11 AAC 89.990 is repealed:

**11 AAC 89.990. Definitions.** Repealed. (Eff. 9/22/95, Register 135; **repealed**  
**/ / , Register** )

**Authority:** **Sec 33, ch. 4** AS 41.09.010 AS 41.09.090  
**4 SSLA 2016** AS 41.09.020