

JU2013200368

ORDER ADOPTING CHANGES TO REGULATIONS OF THE
DEPARTMENT OF NATURAL RESOURCES

The attached 16 pages of regulations, dealing with oil and gas royalty reporting and net profit share leases, are adopted and certified to be a correct copy of the regulation changes that the Department of Natural Resources adopts under the authority of AS 38.05.020, AS 38.05.135, and AS 38.05.180, and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Natural Resources paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

DATE:

11/26/13

Anchorage, Alaska



Joe Balash, Acting Commissioner
Department of Natural Resources

FILING CERTIFICATION

I, Mead Treadwell, Lieutenant Governor for the State of Alaska, certify that on

December 10, 20 13 at 10:55 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Mead Treadwell, Lieutenant Governor
State of Alaska

Effective: January 9, 2014.

Register: 209, April 2014.

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11 AAC 04.040(a) is amended to read:

(a) Supporting documentation for a royalty payment is due on the same day that the payment is due. Supporting documentation **for a royalty payment** must include all royalty **reports**, [REPORT] schedules, and attachments as **required in forms prescribed by the department** [DESCRIBED IN THE DEPARTMENT'S STATE OF ALASKA OIL AND GAS ROYALTY REPORTING INSTRUCTIONS, AS REVISED AS OF SEPTEMBER 1, 2002 AND ADOPTED BY REFERENCE].

11 AAC 04.040(d) is amended to read:

(d) The lessee shall send all supporting documentation for payments by approved electronic commerce method or in writing, [IN ACCORDANCE WITH THE STATE OF ALASKA OIL AND GAS ROYALTY REPORTING INSTRUCTIONS,] to the address specified by the commissioner. (Eff. 2/21/98, Register 145; am 12/27/2002, Register 164; am 1 / 9 / 2014, Register 209)

Authority: AS 38.05.020 AS 38.05.135 AS 38.05.180

Editor's note: Forms and instructions for making royalty payments, and filing royalty reports and supporting documentation required to comply with 11 AAC 04, can be obtained at the Anchorage office of [A COPY OF THE STATE OF ALASKA OIL AND GAS ROYALTY REPORTING INSTRUCTIONS ADOPTED BY REFERENCE IN 11 AAC 04.040(a), MAY BE OBTAINED BY WRITING] the Department of Natural Resources, Division of Oil and Gas, 550 West 7th Avenue, Suite **1100, or can be found on the**

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department's website at www.dog.dnr.alaska.gov/Royalty/ReportingInstructions.htm [800, ANCHORAGE, ALASKA 99501-3560].

11 AAC 04.080 is repealed and readopted to read:

11 AAC 04.080. Administrative fee. The division will charge an administrative fee of \$75 per day for failure to

(1) submit a complete set of original royalty reports and supporting documentation required under 11 AAC 04.040 to the division on or before the designated date due, beginning on the first day after the division provides notice to the lessee that the administrative fee will begin to accrue;

(2) submit revisions to a royalty report or supporting documentation under 11 AAC 04.040 resulting from settlements, lease administrative actions, or royalty accounting reconciliations, beginning on the 31st day after the division provides notice that a revision must be submitted not later than 30 days after the notice; or

(3) make royalty payments when due under 11 AAC 04.030, beginning on the first day after the division provides notice to the lessee that the administrative fee will begin to accrue. (Eff. 2/21/98, Register 145; am 12/27/2002, Register 164; am 1/9/2014, Register 209)

Authority: AS 38.05.020 AS 38.05.180

11 AAC 04.090(a) is amended to read:

(a) The commissioner may waive an administrative fee established under 11 AAC

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04.080 if a lessee provides sufficient facts to establish reasonable cause for a delayed or incomplete royalty report [, FAILURE TO TIMELY COMPLETE AN AGREEMENT IN ACCORDANCE WITH 11 AAC 04.080(a)(4),] or failure to pay royalties when due.

(Eff. 2/21/98, Register 145; am 12/27/2002, Register 164; am 1 / 9 / 2014, Register 209)

Authority: AS 38.05.020

11 AAC 04.199(7) is amended to read:

(7) "royalty report" means a royalty operator report (O1 **form**), royalty valuation report (A1 **form**), and royalty **or net profit share lease (NPSL)** payment summary report (S1 **form**) [, AND ANY SUPPLEMENTAL REPORTS REQUIRED] for an accounting unit [, AS REQUIRED IN THE DEPARTMENT'S STATE OF ALASKA OIL AND GAS ROYALTY REPORTING INSTRUCTIONS, ADOPTED BY REFERENCE IN 11 AAC 04.040(a)]. (Eff. 2/21/98, Register 145; am 12/27/2002, Register 164; am 1 / 9 / 2014, Register 209)

Authority: AS 38.05.020 AS 38.05.180

11 AAC 83.209 is repealed and readopted to read:

11 AAC 83.209. Production revenue account. (a) A NPSL's production revenue account for a month is credited with the production revenue under 11 AAC 83.222 for the NPSL during a month.

(b) For a month during which or after commercial production commences from the NPSL and for which the monthly production tax net revenue under 11 AAC 83.241(c) is negative, a NPSL's production revenue account is credited with a net loss credit. For purposes of

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this subsection, a net loss credit is the following percentage of the negative monthly production tax net revenue: 20 percent if the month is after March 2006 and before July 2007, 25 percent if the month is after June 2007 and before January 2014, or 35 percent if the month is after December 2013. The commissioner may approve a discount to the net loss credit if the lessee shows by clear and convincing evidence that the lessee cannot either

(1) use the negative monthly production tax net revenue to reduce its own production tax liability for the calendar year under AS 43.55; or

(2) realize the full value of the credit by using or selling a tax credit under AS 43.55 based on the negative monthly production tax net revenue.

(c) A NPSL's production revenue account for a month is debited with

(1) the NPSL's direct operating costs under 11 AAC 83.240, for that month; and

(2) the NPSL's royalty payments, as specified in 11 AAC 83.242, for that month.

(d) If the credits to the production revenue account for the NPSL during a month equal or exceed the debits that month to that account, an amount equal to that excess, if any, is credited that month to the development account of that NPSL and the same amount debited to the NPSL's production revenue account so the ending balance in the production revenue account that month is zero. If the debits to the production revenue account for a NPSL during a month exceed the credits that month to that account, an amount equal to that excess is carried forward as a debit to the production revenue account of the NPSL for the following month. (Eff. 11/9/79, Register 72; am 2/13/2010, Register 193; am 1/9/2014, Register 209)

Authority: AS 38.05.020 AS 38.05.180

Editor's note: The provisions of 11 AAC 83.209(c) and (d) were originally 11 AAC 83.209(b) and (c). Those provisions were re-lettered as of January 9, 2014, Register 209.

The provisions of 11 AAC 83.209(b) and (c) [now (c) and (d)] did not appear in print from Register 193 (April 2010) through Register 207 (October 2013), due to a printing error. As of Register 208 (January 2014), the regulations attorney made a

11 AAC 83.212(c) is amended to read:

(c) If a credit to the NPSL's development account arises under 11 AAC 83.209(d) [11 AAC 83.209(c)] from the NPSL's production revenue account, that credit is entered in the development account in the same month as the month in which it arises from the production revenue account.

(Eff. 11/9/79, Register 72; am 2/13/2010, Register 193; am 1 / 9 / 2014, Register 209)

Authority: AS 38.05.020

AS 38.05.180

11 AAC 83.220(b) is amended to read:

(b) A lessee's qualified development costs incurred during a month after March 2006 and before January 2014 generate a credit against the development account in that month. Except as otherwise provided in this subsection, the credit is equal to 20 percent of the qualified development costs. For a month after June 2007 and before January 2014, half of the credit is discounted for one year based on the annualized monthly interest rate for the development account applicable to the month the qualified development costs are incurred. In addition, the commissioner may approve a discount to the credit if the lessee shows by clear and convincing evidence that the lessee cannot either

(1) use the qualified development costs to reduce its own production tax liability for the calendar year under AS 43.55; or

technical revision under AS 44.62.125(b)(6) to restore 11 AAC 83.207 (b) and (c) [now (c) and (d)] to print.

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(2) realize the full value of the credit by using or selling a tax credit under AS 43.55 based on the qualified development costs.

11 AAC 83.220(c) is amended to read:

(c) In addition to the credit provided under (b) of this section, a lessee's qualified development costs incurred during a month before commercial production commences and after March 2006 generates a credit against the development account in that month. For a month before July 2007, the credit is equal to 20 percent of the qualified development costs. For a month after June 2007 **and before January 2014**, the credit is equal to 25 percent of the qualified development costs. **For a month after December 2013, the credit is equal to 35 percent of the qualified development costs.** The commissioner may approve a discount to the credit if the lessee shows by clear and convincing evidence that the lessee cannot either

(1) use the qualified development costs to reduce its own production tax liability for the calendar year under AS 43.55; or

(2) realize the full value of the credit by using or selling a tax credit under AS 43.55 based on the qualified development costs. (Eff. 2/13/2010, Register 193; am

1 / 9 / 2014, Register 209)

Authority: AS 38.05.020 AS 38.05.180

11 AAC 83.231(a) is amended to read:

(a) A lessee's extraordinary production revenue or loss for a lease **under (b) or (c) of this section** is fully recognized for purposes of this chapter in the month in which it is realized.

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Multiple realizations of extraordinary production revenue or loss by a lessee during a single month are cumulative, with revenues added to revenues and losses to losses, and with revenues and losses offset against each other.

(Eff. 11/9/79, Register 72; am 1 / 9 / 2014, Register 209)

Authority: AS 38.05.020 AS 38.05.180

11 AAC 83 is amended by adding a new section to read:

11 AAC 83.235. Redetermination of volume allocations. A retroactive redetermination of the quantity of oil or gas previously allocated to a NPSL or to a NPSL lessee's working interest ownership, including a retroactive redetermination of royalty or overriding royalty volumes, is not an extraordinary production revenue or loss under 11 AAC 83.231. When the quantity of oil or gas previously allocated to a NPSL or to a NPSL lessee's working interest ownership is retroactively redetermined due to a retroactive change approved by the commissioner in volumetric tract production allocation factors or due to the correction of a volumetric error, all revenues, costs, and expenses previously determined by volumetric tract production allocation factors, including interest on the development account, must be retroactively restated for the development account, the production revenue account, and the net profit payment account in accordance with that quantity redetermination. Expenditures previously allocated to a NPSL on a reasonable basis other than volumetric tract production factors are not required to be restated retroactively. (Eff. 1 / 9 / 2014, Register 209)

Authority: AS 38.05.020 AS 38.05.180

11 AAC 83.241 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 [CREDIT], if any, under (b) of this section from the greater of the following two amounts:

(1) the sum of

(A) 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; [OR]

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

2014; or [AND]

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

(B) 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.

(b) The tax credits [CREDIT] for purposes of (a) of this section are [IS THE PRODUCT OF]

(1) the product of

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

(3) for a month after December 2013, the smaller of

(A) the product of the number of barrels, if any, of oil, other than state royalty oil, that is produced from the NPSL during the month and 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 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.

(c) For purposes of 11 AAC 83.209(b) [11 AAC 83.209] 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 multiplied by 0.8 for oil and gas that meet one or more of the criteria in AS 43.55.160(f), less [ALL OF] 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 [; AND

(3) THE LESSEE'S ROYALTY PAYMENTS IN 11 AAC 83.242].

(d) The lease-allocated tax based on price index for purposes of (b) of this section equals, for a month

(1) before July 2007, the amount of tax calculated under AS 43.55.011(g) and (h), as those provisions read on June 30, 2007, but substituting in that calculation, on a per Btu-equivalent basis as applicable, as "Btu-equivalent" is defined in 11 AAC 83.295, the monthly production tax net revenue under (c) of this section, for the monthly production tax value of the taxable oil and gas as calculated under AS 43.55.160, on a per BTU equivalent barrel basis as applicable, as "BTU equivalent barrel" is defined in AS 43.55.900;

(2) after June 2007 and before January 2014, the amount of tax calculated under AS 43.55.011(g), as repealed and reenacted by sec. 17, ch. 1, SSSLA 2007, but substituting in that calculation

(A) the monthly production tax net revenue under (c) of this section, for the monthly production tax value of taxable oil and gas as calculated under AS 43.55.160;

(B) the lessee's Btu-equivalents, as defined in 11 AAC 83.295, of oil and gas produced from the NPSL divided by the net profit deductibility factor for the month under (e) of this section, for the BTU equivalent barrels, as defined in AS 43.55.900, of

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taxable oil and gas;

(3) after December 2013, zero.

(e) For purposes of (a) and (d) of this section, the net profit deductibility factor

(1) equals one for a month

(A) before July 2007;

(B) after June 2007, if the development account beginning debit balance

less the monthly production tax net revenue under (c) of this section, if any, is positive or

zero;

(2) otherwise is calculated according to the following formula:

Before January 2014

$$\text{NPDF} = (1 - \text{NPR}) / (1 - (.25 * \text{NPR})),$$

After December 2013

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

"NPDP" equals [NPDP =] the net profit deductibility factor, **and**

"NPR" equals [; NPR =] the net profit share defined in the lease expressed as a fixed percentage

of the net profit [SHARE] payment account. (Eff. 2/13/2010, Register 193; am 1 / 9 / 2014,

Register 209)

Authority: AS 38.05.020 AS 38.05.180

11 AAC 83.245(b) is amended to read:

(b) Each lessee shall file **NPSL** reports, **including supporting documentation as required**, on forms prescribed by the department, together with the appropriate payment, if any,

due the state on each NPSL, not later than 60 days following the end of each month. If the due date falls on a Saturday, Sunday, or state or federal holiday, the NPSL reports are due on the next business day. If two or more lessees hold a working interest in the same NPSL, they may, with the consent of the commissioner, appoint a designated operator of that NPSL to be responsible for the reporting requirements in this subsection before commercial production commences. The NPSL reports must contain the following information:

- (1) the volume and dispositions of all oil and gas production saved, removed, or sold for the production period;
- (2) the value of oil or gas removed or sold;
- (3) the amount and description of items in the NPSL accounts as defined in 11 AAC 83.209, 11 AAC 83.212, and 11 AAC 83.214, and the balance of the accounts for the month;
- (4) the monthly profit share of the lessee and the monthly net profit payment due the state; and
- (5) the calculations required under 11 AAC 83.220 and 11 AAC 83.241.

11 AAC 83.245(e) is amended to read:

(e) Records pertaining to development costs incurred before the start of commercial production, which are not included in NPSL reports filed under (b) of this section, must be kept and maintained for four years after the expiration of the calendar year in which commercial production begins or until abandonment of the lease if no commercial production begins.

Records of the information required in (b) of this section, including a lessee's standard or joint

accounting system records, must be kept and maintained for six years after the expiration of the calendar year in which the NPSL reports were filed with the state under (b) of this section.

However, records of information required in (b) of this section, including standard or joint accounting system records, relating to abandonment cost amortization, must be kept and maintained from the date of issuance of the lease until three years following abandonment of the lease. Upon request by the state, the lessee shall make all records required by this section available for inspection and copying by authorized representatives of the state during normal business hours.

11 AAC 83.245(g) is amended to read:

(g) Not later than May 14, 2010, each lessee shall file amended NPSL reports under this section covering each month after March 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.

11 AAC 83.245 is amended by adding a new subsection to read:

(h) The division will charge an administrative fee of \$75 per day for failure to

(1) submit a complete set of original NPSL reports required under this section, beginning on the first day after the division provides notice to the lessee that the administrative fee will begin to accrue;

(2) submit revisions to a NPSL report filed under this section for that NPSL resulting from settlements, lease administrative actions, or NPSL accounting reconciliations, beginning on the 31st day after the division provides notice to the lessee that a revision must be

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submitted not later than 30 days after the notice; or

(3) make NPSL payments when due under this section, beginning on the first day after the division provides notice to the lessee that the administrative fee will begin to accrue.

(Eff. 11/9/79, Register 72; am 8/15/82, Register 83; am 2/13/2010, Register 193; am

1/9/2014, Register 209)

Authority: AS 38.05.020 AS 38.05.180

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

11 AAC 83 is amended by adding a new section to read:

11 AAC 83.246. Waiver of administrative fee. (a) The commissioner may waive an administrative fee under 11 AAC 83.245(h) if a lessee provides sufficient facts to establish a reasonable cause for a delayed or incomplete NPSL report, failure to pay NPSL payments when due, or failure to submit revisions.

(b) A lessee must apply for a waiver of an administrative fee by filing a written statement of facts to establish reasonable cause for noncompliance. The lessee must file the statement with the division not later than 10 days after the division notifies the lessee that an administrative fee is due under 11 AAC 83.245(h).

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(c) Circumstances that may constitute reasonable cause are limited to

(1) a war, riot, rebellion, act of God, or other disaster that made compliance impossible;

(2) acts or omissions by a third party that were beyond the control of the lessee, and that made noncompliance unavoidable;

(3) the taking by the lessee, in good faith, of all steps and precautions reasonably necessary to ensure compliance. (Eff. 1 / 9 / 2014, Register 209)

Authority: AS 38.05.020 AS 38.05.180

11 AAC 83.290(1) is amended to read:

(1) **11 AAC 83.209(b)** [11 AAC 83.209(a)];

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

Authority: AS 38.05.020 AS 38.05.180 Sec. 72, ch. 1, SSSLA 2007

11 AAC 83.295 is amended by adding new paragraphs to read:

(32) "division" means the division of oil and gas in the Department of Natural Resources;

(33) "NPSL report" means a NPSL volume value report (VV form), NPSL account report (AC form), NPSL petroleum production tax lease allowance report (PT form), and royalty or NPSL payment summary report (S1 form) for a NPSL. (Eff. 11/9/79, Register 72; am 8/15/82, Register 83; am 1 / 9 / 2014, Register 209)

Authority: AS 38.05.020 [AS 37.05.020] AS 38.05.180