

DEPARTMENT OF NATURAL RESOURCES



PROPOSED CHANGES TO REGULATIONS

11 AAC 04

Payment of Oil and Gas Royalties, Rents, and Bonuses

11 AAC 83

Oil and Gas Leasing



PUBLIC REVIEW DRAFT

August 29, 2013

**Comment period ends: September 30, 2013.
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 is being repealed and readopted (replaced), the new (or replaced) text is not bolded or underlined.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, Natural Resources, Chapter 04, Payment of Oil and Gas Royalties, Rents and Bonuses

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 must include all royalty reports, schedules, and attachments as **required in forms and instructions 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 **instructions prescribed by the department** [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. ___/___/2013, Register ___)

Authority: AS 38.05.020 AS 38.05.135 AS 38.05.180

11 AAC 04.080(a)(4) is repealed:

(4) repealed ___/___/___;

(Eff. 2/21/98, Register 145; am 12/27/2002, Register 164; am / / /, Register___)

Authority: AS 38.05.020 AS 38.05.180

11 AAC 04.199 (7) is amended to read:

(7) “royalty report” means a royalty operator report, (O1), royalty valuation report (A1), [AND] royalty **and NPSL** payment summary report (S1), and any supplemental reports required for an accounting unit, as required in **forms and instructions prescribed by the department** [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 ___/___/___, Register ___)

Authority: AS 38.05.020 AS 38.05.180

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

11 AAC 83.209 (a) is amended to read:

(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. [IN ADDITION, 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 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, OR 25 PERCENT IF THE MONTH IS AFTER JUNE 2007, 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].

11 AAC 83.209 is amended by adding a new subsection to read:

(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 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% 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.

11 AAC 83.209 is amended by adding a new subsection to read:

(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.

11 AAC 83.209 is amended by adding a new subsection to read:

(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 ___/___/ 2013, Register ___)

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

(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 ___/___/2013, Reg. ___)

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. 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.

11 AAC 83.231 is amended by adding a new subsection to read:

(e) 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 this section. 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 share 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. 11/9/79, Register 72; am. ___/___/___, Register ___)

Authority: AS 38.05.020 AS 38.05.180

11 AAC 83.241 (a) is amended to read:

(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.

11 AAC 83.241 (b) is amended to read:

(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, produced from the NPSL during the month 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, 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 greater of zero and the following amount:**

A - B - C, where

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

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

C = the amount calculated under (a)(2) of this section.

11 AAC 83.241(c) is amended to read:

(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 in 11 AAC 83.242, less all of the following amounts, 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 in 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) but not the criteria in AS 43.55.160(g) or by 0.7 for oil and gas that meet the criteria in AS 43.55.160(f)(1) and (g):**

(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].

11 AAC 83.241 (d) is amended to read:

(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 taxable oil and gas;

(3) after December 2013, zero.

11 AAC 83.241(e) is amended to read:

(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

NPDF = the net profit deductibility factor;

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

Authority: AS 38.05.020

AS 38.05.180

11 AAC 83.245(b) is amended to read:

(b) Each lessee shall file reports **as required** on forms **and instructions** 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 holiday, the 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 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 is amended by adding a new subsection to read:

(h) The division will charge an administrative fee of \$75 per day, beginning on the first day after the division provides notice to the lessee, for

(1) each original NPSL report (as defined in 11 AAC 83.245(b)) not received by the division by the designated date due;

(2) each original NPSL report (as defined in 11 AAC 83.245(b)) that is received by the designated due date, but that does not contain all documentation and information as required under 11 AAC 83.245(b);

(3) revisions to a NPSL report (as defined in 11 AAC 83.245(b)) resulting from settlements, lease administrative actions, or NPSL accounting reconciliations, and not filed within 30 days after issuance of the notice that a revision is required or by the date required in a settlement agreement;

(4) failure to make NPSL payments when due under 11 AAC 83.245; and

(5) for the purposes of determining whether to charge an administrative fee under this section, for a NPSL report submitted under 11 AAC 83.245(b) each schedule and attachment included in the NPSL report that is required to clearly present the facts of production, valuation, costs, or other payments associated with the NPSL lease for which the NPSL report is submitted is considered a separate report. (Eff. 11/9/79, Register 72; am 8/15/82, Register 83; am 2/13/2010, Register 193; am ___/___/___, Reg. ___)

Authority: AS 38.05.020 AS 38.05.180