

Title 38. Public Land.

Chapter

- 05. Alaska Land Act (§§38.05.005 – 38.05.990)
- 06. Alaska Royalty Oil and Gas Development Advisory Board (§§ 38.06.110 – 38.06.080)
- 35. Right-of-Way Leasing Act (§§38.35.010 – 38.35.260)

Chapter 5. Alaska Land Act.

Article

- 1. Administration
- 5. Reservation of Rights to Alaska
- 5A. Oil and Gas Exploration Licenses: Leases
- 6. Leasing of Mineral Land

Article

- 7. Mining Rights
- 11. Classification of Land
- 13. Miscellaneous Provisions
- 14. General Provisions

Revisor's notes. - Through administrative reorganization, the Department of Natural Resources has eliminated the division of lands. Duties and responsibilities given to the division of lands under this chapter have been assigned to

other divisions of the department. Duties and responsibilities given to the director of the division of lands under this chapter have been assigned to the deputy commissioner for operations who has been given the additional title "director of lands."

NOTES TO DECISIONS

Chapter enacted pursuant to Alaska Const., art. VIII, § 10. - See Moore v. State, 553 P.2d 8 (Alaska 1976); North Slope Borough v. LeResche, 581 P.2d 1112 (Alaska 1978).

Cited in Thomas v. Bailey, 595 P.2d 1 (Alaska 1979); Hammond v. North Slope Borough, 645 P.2d 750 (Alaska 1982); State v. First Nat'l Bank, 660 P.2d 406 (Alaska 1982); Gilman v. Martin, 662 P.2d 120 (Alaska 1983).

Article 6. Leasing Of Mineral Land.

Section

- 135. Leasing generally; payments and interest
- 137. Leasing agreements
- 140. Limitations
- 145. Leasing procedure
- 150. Coal
- 155. Phosphates
- 160. Oil shale
- 165. Sodium
- 170. Sulphur

Section

- 175. Potassium
- 180. Oil and gas leasing
- 181. Geothermal resources
- 182. Royalty on natural resources
- 183. Sale of royalty
- 184. Limitation on oil and gas leases in certain areas, and Requisition of leases

Sec. 38.05.182. Royalty on natural resources. (a) Any royalty provided for in AS 38.05.135 - 38.05.181 may be taken in kind rather than in money if the commissioner determines that the taking in kind would be in the best interest of the state. However, royalties on oil and gas shall be taken in kind unless the commissioner determines that the taking in money would be in the best interest of the state.

(b) The commissioner shall submit a determination to take royalty in money to the legislature at the first opportunity during a current session or, if the legislature is not in session, at the next regular session. The legislature, within 60 days or by the adjournment of the session, whichever comes sooner, may revoke the determination by concurrent resolution. (§ 1 ch 56 SLA 1970; am § 7 ch 71 SLA 1971; am § 1 ch 9 SSSLA 1974; am § 5 ch 218 SLA 1976; am § 1 ch 146 SLA 1977; am § 8 ch 112 SLA 1980)

Revisor's notes. - Enacted as AS 38.05.362. Renumbered in 1970.

NOTES TO DECISIONS

Quoted in *McKinnon v. Alpetco Co.*, 633 P.2d 281 (Alaska 1981).

Collateral references. - 38 Am. Jur. 2d. Gas and Oil, §§ 189 to 198.
58 D.J.S., Mines and Minerals, §§ 185 to 192, 213 to 219.
What constitutes "royalty" on oil or gas production within language of conveyance, exception or reservation, 4 ALR2d 492.
Construction and effect of provision in mineral lease excusing payment of minimum rent or royalty, 28 ALR2d 1013.
Solid mineral royalty as real or personal property, 68 ALR2d 728.
Solid mineral royalty under mining lease as real or personal property for purpose of payment of damages in condemnation proceedings, 68 ALR2d 735.

Expenses and taxes deductible by lessee in computing lessor's oil and gas royalty or other return, 73 ALR2d 1056.
Payment of stipulated minimum royalties or annual rental under solid mineral lease as precluding lessor's claim of forfeiture or abandonment, 87 ALR2d 1076.
"Shut-in royalty" payment provisions in oil and gas leases, 96 ALR2d 345.
Rights of parties to oil and gas lease or royalty deed after expiration of fixed term where production temporarily ceases, 100 ALR2d 885.

Sec. 38.05.183. Sale of royalty. (a) The sale, exchange or other disposal of a mineral obtained by the state as a royalty under AS 38.05.182, or the sale, exchange or other disposal in whole or in part of a right to receive future mineral production under a state lease under this chapter, shall be by competitive bid and the sale, exchange or other disposal made to the highest responsible bidder, except that competitive bidding is not required when the commissioner, after prior written notice to the Alaska Royalty Oil and Gas Development Advisory Board under AS 38.06.050, determines that the best interest of the state does not require it or that no competition exists.

(b) When competitive bids are required, the commissioner, after prior written notice to the Alaska Royalty Oil and Gas Development Advisory Board, may reject all bids on a determination that because of the amount of the bids, the lack of responsibility on the part of the bidders, or for reasons consistent with the criteria set out in AS 38.06.070, the acceptance of the bids would not be in the best interest of the state.

(c) If the commissioner determines that a sale, exchange or other disposal of a mineral obtained by the state as a royalty under AS 38.05.182 or of a right to receive future mineral production under a state lease under this chapter shall be made otherwise than by competitive bid, and the Alaska Royalty Oil and Gas Development Advisory Board has been notified in writing of that determination, the commissioner shall make public in writing the specific findings and conclusions upon which that determination is based.

(d) Oil or gas taken in kind by the state as its royalty share may not be sold or otherwise disposed of for export from the state until the commissioner determines that the royalty-in-kind oil or gas is surplus to the present and projected intrastate domestic and industrial needs. The commissioner shall make public, in writing, the specific findings and reasons on which the determination is based.

(e) When a sale, exchange or other disposal of oil or gas taken in kind by the state as its royalty share, or a sale, exchange or other disposal in whole or in part of a right to receive future royalty oil or gas, under a state lease under this chapter is made other than by competitive bid, the sale, exchange or other disposal shall be awarded by the commissioner to the prospective buyer whose proposal offers the maximum benefits to citizens of the state. The commissioner shall consider

(1) the cash value offered;

(2) the projected effects of the sale, exchange or other disposal on the economy of the state;

(3) the projected benefits of refining or processing the oil or gas in the state;

(4) the ability of the prospective buyer to provide refined products or by-products for distribution and sale in the state with price or supply benefits to the citizens of the state; and

(5) the criteria listed in AS 38.06.070(a).

(f) The commissioner may not enter into a contract for the sale of royalty oil unless the contract provides that any material amendment to the contract that appreciably reduces the consideration received by the state requires prior approval of the legislature.

(g) AS 38.05.035(e) does not apply to a sale, exchange, or other disposal of oil or gas under this section.

(h) Upon legislative approval, the commissioner may enter into a contract to sell royalty gas taken in kind by the state to a gas or electric utility at a negotiated price for the gas if the commissioner, after considering the consumer benefits, other benefits, and detriments of the sale, makes a written finding that the sale is in the best interest of the state. In this subsection,

(1) "gas or electric utility" has the meaning given in AS 38.05.180(bb);

(2) "royalty gas taken in kind by the state" does not include royalty gas taken in kind by the state from gas production on land patented to the state under

(A) P.L. 84-830, 70 Stat. 709 (Alaska Mental Health Enabling Act);

(B) 38 Stat. 1214 (Act of March 4, 1915); or

(C) 43 U.S.C. 1635 in settlement of the claims of the state under 38 Stat. 1214. (§ 1 ch 56 SLA 1970; am § 3 ch 9 SSSLA 1974; am § 9, 10 ch 112 SLA 1980; am § 2 ch 68 SLA 1984; am § 2 ch 105 SLA 1984; am § 1 ch 64 SLA 1985; am § 3 ch 55 SLA 1986; am § 6 ch 134 SLA 1990)

Revisor's notes. - Enacted as AS 38.05.363. Renumbered in 1970.

Cross references. - For legislative findings in connection with the 1986 amendment to this section, see § 1 ch 55 SLA 1986, in the Temporary and Special Acts.

Effect of amendments. - The 1985 amendment added subsection (g).

The 1986 amendment added subsection (h).

The 1990 amendment deleted a provision pertaining to an annual report by the commissioner at the end of the second sentence of subsection (d).

NOTES TO DECISIONS

Waiver of competitive bidding. - An initial waiver of competitive bidding and a second waiver at the time of amendment removed

any obligation to open the contract to competitive bidding. *McKinnon v. Alpetco Co.*, 633 P.2d 281 (Alaska 1981).

Sec. 38.05.184. Limitation on oil and gas leases in certain areas, and reacquisition of leases.

(a) The legislature finds that Kachemak Bay is an area of extraordinary abundance and diversity of marine life that has provided, and will continue to provide in the future, a basis for one of the state's most important commercial fisheries; that recent information discloses that even minute quantities of oil released into the marine environment may be harmful to the larval forms of crabs and other marine life and that the existence of gyral currents within the bay may increase the likelihood of oil coming into contact with these valuable commercial fish and shellfish

species; and that therefore oil and gas development in the bay, at this time, presents an undue hazard to this valuable state renewable resource.

(b) No additional oil or gas leases may be issued by the department or any other state agency for the exploration for or the development or production of oil and gas on state-owned land and waters seaward of the mean higher high water line, beginning at Anchor Point; then around the perimeter of Kachemak Bay, to Point Pogibshi; then west to the three mile limit of state land and waters; then north to a point three miles west of Anchor Point; then east to the mean higher high water line of Anchor Point, the point of beginning.

(c) *[Repealed, § 61 ch 50 SLA 1989.]*

(d) *[Repealed, § 61 ch 50 SLA 1989.]*

(e) *[Repealed, § 61 ch 50 SLA 1989.]*

(f) *[Repealed, § 61 ch 50 SLA 1989.]*

(g) *[Repealed, § 61 ch 50 SLA 1989.]* (§ 1 ch 113 SLA 1976; am § 61 ch 50 SLA 1989)

Effect of amendments. - The 1989 amendment, effective May 27, 1989, repealed subsections (c) - (g).

Chapter 06. Alaska Royalty Oil And Gas Development Advisory Board.

Section

- 10. Purpose
- 20. Establishment
- 25. Membership
- 30. Compensation; per diem, travel
- 35. Meetings, rules, quorum, votes required; conflict of interest

Section

- 40. Powers and duties of the board
- 50. Board review and recommendation
- 55. Legislative approval
- 60. Confidentiality
- 70. Criteria
- 80. Definitions

Sec. 38.06.010. Purpose. It is the purpose of this chapter to facilitate the wise development of Alaska's oil and gas royalty interests by providing means and procedures for sales, exchanges or other disposition of those interests in ways calculated to promote private economic growth consistent with applicable environmental standards and public fiscal stability, and in accordance with AS 38.05.183. (§ 2 ch 9 SSSLA 1974)

NOTES TO DECISIONS

Cited in McKinnon v. Alpetco Co., 633 P.2d 281 (Alaska 1981).

Sec. 38.06.020. Establishment. There is established in the Department of Natural Resources the Alaska Royalty Oil and Gas Development Advisory Board. (§ 2 ch 9 SSSLA 1974; am § 1 ch 112 SLA 1980; am E.O. No. 61 § 2 (1986))

Effect of amendments. - The 1986 amendment substituted "Department of Natural Resources" for "Department of Commerce and Economic Development."

Sec. 38.06.025. Membership; vacancies. (a) The board consists of the commissioner of commerce and economic development; the commissioner of community and regional affairs; the commissioner of natural resources, who is a nonvoting member; and five public members.

(b) The public members shall be appointed by the governor to serve at the pleasure of the governor for five-year staggered terms and confirmed by a vote of a majority of the members of the legislature in joint session. The public members may not be state officers or employees. Four of the public members may not be, nor have been in the past five years, employed by a person whose primary business is, or who owns a controlling interest in a corporation whose primary business is, the exploration for or development, production, transportation, sale, refining, or processing of petroleum products. One of the public members shall possess experience in petroleum-related fields in such areas as exploration, development, production, or economics.

(c) A chairman shall be elected by the board from among the public members.

(d) A public member shall continue in office at the expiration of a term until a successor is appointed and qualifies.

(e) Vacancies in public membership shall be filled in the same manner as original appointment. Except as provided in AS 39.05.080 (4), an appointee to fill a vacancy shall hold office for the balance of the term for which the predecessor on the board was appointed. A vacancy in board

membership does not impair the authority of a quorum of the board members to exercise all the powers and duties of the board. (§ 2 ch 9 SSSLA 1974; am § 8 ch 207 SLA 1975; am § 2 ch 112 SLA 1980; am § 11 ch 80 SLA 1996; am §§ 1, 2 ch 142 SLA 1998)

Cross references. – For transitional provisions concerning the 1998 amendments to subsections (a) and (b), see § 3, ch. 142, SLA 1998 in the 1998 Temporary and Special Acts.

Effects of amendments. – The 1996 amendment, effective January 1, 1997, in subsection (c), in the second sentence, added “Except as provided in AS 39.05.080(4),” at the beginning and made a related stylistic change.

The 1998 amendment, effective September 29, 1998, in subsection (a) substituted “commissioner of community and regional affairs” for “commissioner of revenue” and “five” for “three”; and in subsection (b) rewrote the first sentence and added the last two sentences.

Sec. 38.06.030. Compensation; per diem, travel expenses. Members of the board are in the exempt service under AS 39.25.110 and shall receive per diem and travel allowances as provided by law for other boards and commissions. (§ 2 ch 9 SSSLA 1974)

Cross references. - For per diem and travel expenses, see AS 39.20.180.

Sec. 38.06.035. Meetings, rules, quorum, votes required; conflict of interest. (a) The board shall prescribe its own rules of procedure. It shall meet at a time and place determined by the chairman, and at other times and places as the chairman, or a majority of the board members, considers necessary. A quorum is a majority of the voting members of the board. The votes of the board members shall be recorded. Effective action to carry out the powers granted under this chapter requires the affirmative vote of a majority of the board members. A board member may not, with respect to a matter before the board, vote for or on behalf of another member of the board.

(b) A member of the board may not act upon a matter in which the relationship of a member of the board with any person creates a conflict of interest. A board member may not have an official connection with or hold stock or securities in, or have a pecuniary interest in, a corporation, company or association engaged in the production or transportation of oil or gas. (§ 2 ch 9 SSSLA 1974; am § 3 ch 112 SLA 1980)

Sec. 38.06.040. Powers and duties of the board. (a) The board shall

(1) in accordance with the criteria set out in AS 38.06.070, develop a plan for the wise development of the state's oil and gas royalty interests; the plan of development shall be consistent with

- (A) growth of the private sector of the economy;
- (B) environmental standards required by law; and
- (C) public fiscal stability;

(2) hold public hearings on proposed sales, exchanges, or other disposals of royalty oil or gas to determine whether the proposals comply with AS 38.06.070;

(3) examine proposed sales, exchanges or other disposal of, and recommend to the legislature that it approve or disapprove a proposed sale, exchange or other disposal of

(A) the oil or gas that is obtained by the state as royalty under AS 38.05.182; or

(B) the rights to receive future oil or gas production under state leases; and

(4) recommend to the commissioner of natural resources the conditions relating to the sale, delivery, transportation, refining or processing of oil or gas which the commissioner may include in the offer and sale of oil or gas obtained by the state as royalty under AS 38.05.182.

(b) The board may

(1) direct the commissioner of natural resources to solicit development plans or bids consistent with the criteria set out in AS 38.06.070 for

(A) the sale, exchange or other disposal of oil or gas obtained by the state as royalty under AS 38.05.182; or

(B) the sale, exchange or other disposal of all or a portion of the rights to receive future oil or gas production under a state lease;

(2) employ an executive director, and contract for the services of professionals, persons with knowledge of economics and other disciplines, and persons with technical skills who may be necessary to assist the board in the exercise of its powers and duties; and

(3) adopt regulations under the Administrative Procedure Act (AS 44.62) that are necessary for the exercise of its powers and duties. (§ 2 ch 9 SSSLA 1974; am § 4 ch 112 SLA 1980)

Sec. 38.06.050. Board review and recommendation required. (a) If legislative approval is required by AS 38.06.055, a sale, exchange, encumbrance, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas may not be made by the commissioner of natural resources under AS 38.05.183 without prior review of the proposed sale, exchange, encumbrance, or other disposition by the board. A written recommendation of the board on the proposed sale, exchange, encumbrance, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas shall be submitted to the legislature at the time a bill approving the proposed sale, exchange, encumbrance, or other disposition is introduced in the legislature.

(b) Bids or applications for the purchase of royalty oil or gas may be rejected by the commissioner of natural resources if prior written notice of the proposed disapproval is given to the board.

(c) Competitive bidding in a sale, exchange or other disposition described in (a) of this section may not be waived by the commissioner of natural resources under AS 38.05.183 unless prior written notice of proposed waiver is given to the board.

(d) *[Repealed, § 5 ch 112 SLA 1980.]* (§ 2 ch 9 SSSLA 1974; am § 5 ch 112 SLA 1980; am § 43 ch 21 SLA 1991)

Effect of amendments. - The 1991 amendment, effective June 11, 1991, in subsection (a), substituted “a bill approving” for “a

resolution approving” in the second sentence and made punctuation changes.

NOTES TO DECISIONS

Stated in *McKinnon v. Alpetco Co.*, 633 P.2d 281 (Alaska 1981).

Sec. 38.06.055. Legislative approval. (a) In addition to the recommendation by the board required under AS 38.06.050, the commissioner of natural resources may not enter into a sale, exchange, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas under AS 38.05.183 without the prior approval of the legislature. The legislature may approve a sale, exchange, or other disposition of oil or gas or of the rights or of a waiver of the rights to receive future production of royalty oil or gas only by enacting legislation.

(b) The provisions of (a) of this section do not apply to

(1) the sale, exchange, or other disposition of oil or gas for one year or less if the sale, exchange, or other disposition is entered into to relieve storage or market conditions;

(2) contracts for the sale of state-owned royalty gas or oil that specify the sale and delivery of not more than

- (A) 400 barrels of crude oil per day;
- (B) 460 barrels of natural gas liquids per day; and
- (C) 2,400 Mcf of natural gas per day.

(c) A sale, exchange, or other disposition of oil or gas under (b)(1) of this section may not be continued after the end of one year or renewed with the same party without the prior approval of the legislature under (a) of this section. This subsection does not apply to a sequential competitively bid sale of oil or gas made with the same party under (b)(1) of this section. (§ 2 ch 9 SSSLA 1974; am § 2 ch 146 SLA 1977; am § 1 ch 131 SLA 1978; am § 6 ch 112 SLA 1980; am § 2 ch 64 SLA 1985)

Effect of amendments. - The 1985 amendment in subsection (c) in the first sentence deleted "made" following "oil or gas" and "to provide relief for market or storage conditions" following "same party" and added the last sentence.

Opinions of attorney general. - The legislature may not conditionally approve a contract since such conditional acceptance is in law a rejection of the offer and the contract would have to be returned for renegotiation. February 23, 1977, Op. Att'y Gen.

NOTES TO DECISIONS

Quoted in *McKinnon v. Alpetco Co.*, 633 P.2d 281 (Alaska 1981).

Sec. 38.06.060. Confidentiality. Notwithstanding AS 09.25.110 - 09.25.120, the board may provide by regulation for the confidentiality of those documents and records in its possession or control which contain confidential business or marketing information the protection of which is essential to the person who has submitted them to the board or in the judgment of the board is essential to the best interest of the state. Such confidentiality, however, shall not preclude the proper review by the legislature. (§ 2 ch 9 SSSLA 1974)

Opinions of attorney general. - The chairman of the Alaska Royalty Oil and Gas Development Advisory Board may accurately represent to various private companies that documents they provide to the board may be held confidential and will not be subject to public disclosure, provided that the board determines

that they should remain confidential, and in addition, the commissioner may advise the companies that documents which the board determines will not be kept confidential will be returned to them. September 26, 1977, Op. Att'y Gen.

Sec. 38.06.070. Criteria. (a) In the exercise of its powers under AS 38.06.040(a) and 38.06.050 the board shall consider

- (1) the revenue needs and projected fiscal condition of the state;
- (2) the existence and extent of present and projected local and regional needs for oil and gas products and by-products, the effect of state or federal commodity allocation requirements which might be applicable to those products and by-products, and the priorities among competing needs;
- (3) the desirability of localized capital investment, increased payroll, secondary development and other possible effects of the sale, exchange or other disposition of oil and gas or both;
- (4) the projected social impacts of the transaction;
- (5) the projected additional costs and responsibilities which could be imposed upon the state and affected political subdivisions by development related to the transaction;
- (6) the existence of specific local or regional labor or consumption markets or both which should be met by the transaction;
- (7) the projected positive and negative environmental effects related to the transaction; and

(8) the projected effects of the proposed transaction upon existing private commercial enterprise and patterns of investments.

(b) When it is economically feasible and in the public interest, the board may recommend to the commissioner of natural resources, as a condition of the sale of oil or gas obtained by the state as royalty, that

(1) the oil or gas be refined or processed in the state;

(2) the purchaser be a refiner who supplies products to the Alaska market with price or supply benefits to state citizens; or

(3) the purchaser construct a processing or refining facility in the state.

(c) The board shall make a full report to the legislature on each criterion specified in (a) or (b) of this section for any disposition of royalty oil or gas which requires legislative approval. The board's report shall be submitted for legislative review at the time a bill for legislative approval of a proposed disposition of royalty oil or gas is introduced in the legislature. (§ 2 ch 9 SSSLA 1974; am § 2 ch 131 SLA 1978; am § 7 ch 112 SLA 1980; am § 103 ch 6 SLA 1984; am § 44 ch 21 SLA 1991)

Effect of amendments. - The 1991 amendment, effective June 11, 1991, in subsection (c), made a stylistic change in the first sentence

and substituted "a bill for" for "a resolution for" in the second sentence.

NOTES TO DECISIONS

Quoted in *McKinnon v. Alpetco Co.*, 633 P.2d 281 (Alaska 1981).

Sec. 38.06.080. Definitions. In this chapter

(1) "board" means the Alaska Royalty Oil and Gas Development Advisory Board; and

(2) "state lease" means an oil and gas lease on state land. (§ 2 ch 9 SSSLA 1974)

TITLE 11. NATURAL RESOURCES.

Part

1. Office of the Commissioner (11 AAC 02 – 11 AAC 06)
3. Oil and Gas (11 AAC 22 – 11 AAC 26)
6. Lands (11 AAC 51 – 11 AAC 98)

Editor's notes - Regulations governing grants for innovative pollution control, waste disposal, gold recovery, and water use reduction demonstration projects, adopted jointly by the Departments of Environmental Conservation and Natural Resources, are located in 18 AAC 71.

Publisher's notes - Emergency regulations, if any, are placed in an appendix following the permanent regulations in each pamphlet of the Alaska Administrative Code.

PART 1. OFFICE OF THE COMMISSIONER.

Chapter

02. Appeals
03. Disposition of royalty oil, gas, or gas liquids
04. Payment of oil and gas royalties, rents, and bonuses
05. Fees for department services

CHAPTER 3. DISPOSITION OF ROYALTY OIL, GAS, OR GAS LIQUIDS.

Section

10. Provisions applicable to all dispositions of royalty Oil, gas, or associated substances
15. Taking royalty oil, gas, or associated substances in-kind
20. Procedures to be followed for dispositions
22. Storage conditions
24. Market conditions
26. Provisions applicable to royalty contracts
30. Determination of noncompetitive disposition
40. Notification to royalty board
50. Procedure for noncompetitive disposition
60. Award of noncompetitive disposal
70. Rejection of proposals
80. (Repealed)
90. (Repealed)
91. (Repealed)
100. Disposition by competitive bid

Section

110. Sealed bids
120. Invitation to bid
130. Security
140. Advertisement
150. Distribution of invitation to bid
160. Qualifications of bidders
170. Priorities among bidders
180. Designation of priority
190. In-state processor
200. In-state supplier
210. Rejection of bids
220. Awards
230. Conference with bidder
240. Execution of contract for competitive disposal
250. Definitions

11 AAC 03.010. PROVISIONS APPLICABLE TO ALL DISPOSITIONS OF ROYALTY OIL, GAS, OR ASSOCIATED SUBSTANCES. (a) The commissioner will establish the terms, conditions, and method of disposition of state royalty oil, gas, or associated substances which are or will be taken in-kind.

(b) Before taking royalty oil, gas, or associated substances in-kind, the commissioner will determine in writing that taking in-kind will be in the best interests of the state.

(c) Before taking royalty oil, gas, or associated substances in-value, the commissioner will determine in writing that taking in-value is in the best interests of the state.

(d) Before the execution of a contract for the disposition of royalty oil, gas, or associated substances, the commissioner will make a finding that the disposition is in the best interests of the state. If the disposition is by competitive bid, this determination will, in the commissioner's

discretion, be made before the award of oil, gas, or associated substances to a successful bidder or bidders.

(e) Before the execution of a contract for the disposition of royalty oil, gas, or associated substances that permits the export of royalty oil, gas, or associated substances from the state, the commissioner will determine in writing that the oil, gas, or associated substances subject to export are surplus to present and projected intrastate domestic and industrial needs.

(f) If royalty oil, gas, or associated substances are disposed of to relieve storage or market conditions, the commissioner will, before executing the agreement, determine that the agreement will relieve the storage or market condition.

(g) Determinations or findings made in writing under this chapter will be made public by placing a copy on file in the commissioner's office in Juneau, Alaska and by mailing a copy to the Alaska Royalty Oil and Gas Development Advisory Board.

(h) Determinations or findings concerning disposal of royalty oil, gas, or associated substances under this chapter are revocable at any time before execution by the commissioner of a contract for the sale of royalty oil, gas, or associated substances.

(i) More than one determination or finding under this chapter will, in the commissioner's discretion, be made in the same writing. (Eff. 12/12/80, Register 76; am 8/8/84, Register 91; am 5/22/93, Register 126)

Authority:

AS 38.05.020
AS 38.05.182

AS 38.05.183

11 AAC 03.015. TAKING ROYALTY OIL, GAS, OR ASSOCIATED SUBSTANCES IN-KIND. Royalty oil, gas, or associated substances taken in-kind as provided by AS 38.05.182 must be taken under the provision of the lease, including any amendments or supplements to the lease, which reserves the royalty to the state. If no such provision is in the lease, all or any portion of the state's share will, at the option of the commissioner, be taken in-kind in accordance with the following:

(1) 90 days written notice will be given to each lessee of the state's election to take the royalty products in-kind;

(2) after taking has actually commenced, the amount to be taken in-kind will, in the commissioner's discretion, be increased or decreased from time to time by

(A) not more than 10 percent, upon 30 days written notice to each lessee of record;

(B) greater than 10 percent, upon 90 days written notice; and

(3) the products must be delivered to the state or its designated purchaser free of charge at the point specified in the lease, for determination of the value of the royalty product as if the product to be taken were to be paid in money rather than taken in-kind; the condition of the product must be the same as the non-royalty share at the point of taking; the lessee shall, if necessary, furnish safe storage for the royalty share free of charge for the same duration and in the same manner as storage is provided for the non-royalty share. (Eff. 7/19/86, Register 99; am 5/22/93, Register 126)

Authority:

AS 38.05.020
AS 38.05.145

AS 38.05.180
AS 38.05.182

11 AAC 03.020. PROCEDURES TO BE FOLLOWED FOR DISPOSITIONS. (a) If the commissioner disposes of royalty oil, gas, or associated substances by competitive bid, the commissioner will follow the procedures set out in 11 AAC 03.100 - 11 AAC 03.240.

(b) If the commissioner disposes of royalty oil, gas, or associated substances by a method other than by competitive bid, the commissioner will follow the procedure set out in 11 AAC 03.030 - 11 AAC 03.070.

(c) For all dispositions under this chapter, except those to relieve storage or market conditions

(1) the commissioner will prepare written preliminary findings and determinations; and

(2) after a public comment period of not less than 30 days, the commissioner will prepare final findings and determinations.

(d) When making public the written preliminary findings and determinations prepared under (c)(1) of this section, the commissioner will give written notice of the proposed disposal

(1) by publication in newspapers of statewide circulation, and by one or more of the following methods:

(A) publication through public service announcements on the electronic media;

(B) notification of parties known or likely to be affected by the action; or

(C) any other method calculated to reach affected persons; and

(2) which contains sufficient information, in commonly understood terms, to inform the public of the nature of the action and of the opportunity of the public to comment on the action.

(e) When the commissioner disposes of royalty oil, gas, or associated substances to relieve storage conditions, the commissioner will provide public notice appropriate under the circumstances, but need not prepare preliminary findings. However, the commissioner will notify the Alaska Royalty Oil and Gas Development Advisory Board of the storage or market condition, and will prepare final written findings and determinations for the disposal. (Eff. 12/20/80, Register 76; am 8/8/84, Register 91; am 9/28/85, Register 95; am 5/22/93, Register 126)

Authority:

AS 38.05.020
AS 38.05.183

AS 38.06.055

11 AAC 03.022. STORAGE CONDITIONS. The commissioner disposes of royalty oil, gas, or associated substances to relieve storage conditions when

(1) the royalty oil, gas, or associated substances have either been noticed for a taking in-kind or are being taken in-kind or are being taken in-kind by the state; and

(2) the disposition planned for the oil, gas, or associated substances at the time of the notice to take the oil, gas, or associated substances in-kind can no longer be effectuated for any reason, or the disposition is no longer in the best interests of the state. (Eff. 12/12/80, Register 76; am 8/8/84, Register 91; am 5/22/93, Register 126)

Authority:

AS 38.05.020
AS 38.05.183

AS 38.06.055

Editor's notes - Before Register 126, 1993, 11 AAC 03.022 appeared as 11 AAC 03.080. The history of the section under its former number is included in the history note for 11 AAC 03.022.

11 AAC 03.024. MARKET CONDITIONS. The commissioner disposes of royalty oil, gas, or associated substances to relieve the market conditions when

(1) in a noncompetitive disposition of royalty oil, gas, or associated substances the commissioner estimates that the sale price throughout the term of the disposition will be

higher than the volume-weighted average of the current reported netback prices filed by the lessees for royalty purposes for those filing periods applicable to the term of the disposition;

(2) in a disposition of royalty oil by competitive bid the commissioner determines, at the time of issuance of the invitation to bid, that there is a substantial probability that the state will receive, as a result of the disposition by competitive bid, more than the volume-weighted average of the current reported netback prices filed by the lessees for royalty purposes for those filing periods applicable to the term of the disposition, or, in a disposition of gas by competitive bid, the commissioner determines, at the time of issuance of the invitation to bid, that there is a substantial probability that the state will receive, as a result of the disposition by competitive bid, more than the in-value price;

(3) the royalty oil, gas, or associated substances disposed of will be used to meet in-state needs for crude oil, gas, or associated substances or petroleum products and the sale price of that royalty oil, gas, or associated substances is at least equal to the in-value amount which would have been received by the state during the same period; or

(4) there is or will be an emergency in-state need for crude oil, gas, or associated substances or petroleum products, which could be alleviated by the sale of the royalty oil, gas, or associated substances. (Eff. 12/12/80, Register 76; am 8/8/84, Register 91; am 12/15/84, Register 92; am 7/12/85, Register 95; am 9/28/85, Register 95; am 5/22/93, Register 126)

Authority:

AS 38.05.020
AS 38.05.183

AS 38.06.055

Editor's notes - Before Register 126, 1993, 11 AAC 03.024 appeared as 11 AAC 03.090. The history of the section under its former number is included in the history note for 11 AAC 03.024.

11 AAC 03.026. PROVISIONS APPLICABLE TO ROYALTY CONTRACTS. (a) Within 10 days after receiving written notice from a royalty purchaser of its intent to renegotiate price, as provided for by the terms of that purchaser's state royalty contract, or within 10 days after giving a royalty purchaser written notice of the state's intent to renegotiate price, as provided for by the terms of that purchaser's state royalty contract, or before the adoption of any material amendment to a royalty contract which appreciably reduces the consideration received by the state, the commissioner will publish notice of the intent to renegotiate price or amend the contract in a newspaper of general statewide circulation. In addition, the commissioner will, in the commissioner's discretion, publish notice by radio, television, or other electronic media. The notice will include

(1) a summary of information pertinent to the royalty contract, including quantity, current price, and termination date;

(2) a statement indicating where copies of the contract may be obtained; and

(3) a statement that any person may file written comments on the notice with the commissioner within 30 days after publication of the notice.

(b) In establishing or renegotiating the price of a royalty oil contract, the commissioner will obtain a price at least equal to the volume-weighted average of the current reported netback prices filed by the lessees for royalty purposes for those filing periods applicable to the term of the disposition, plus field costs, if any, incurred by the royalty share. In establishing or renegotiating the price of a royalty gas contract, the commissioner will obtain a price at least equal to the price that would have been received had the gas been taken in-value, plus field costs,

if any, incurred by the royalty share, unless the commissioner determines that a lower price for the royalty gas would best serve the state's interest.

(c) The commissioner will submit to the legislature for approval any material amendment to a royalty contract which appreciably reduces the consideration received by the state. (Eff. 8/8/84, Register 91; am 12/15/84, Register 92; am 9/28/85, Register 95; am 5/22/93, Register 126)

Authority: AS 38.05.020 AS 38.05.183
AS 38.05.182

Editor's notes - Before Register 126, 1993, 11 AAC 03.026 appeared as 11 AAC 03.091. The history of the section under its former number is included in the history note for 11 AAC 03.026.

11 AAC 03.030. DETERMINATION OF NONCOMPETITIVE DISPOSITION. (a) If the commissioner determines that the royalty oil, gas, or associated substances will be disposed of by a method other than by competitive bid, the commissioner will make this determination in writing.

(b) The determination to dispose of royalty oil, gas, or associated substances by a method other than by competitive bid will be made on the basis either that the best interests of the state do not require a competitive disposition or that no competition exists. The written determination will include the specific findings and conclusions for the commissioner's determination. The commissioner, in determining whether competition exists, will, in the commissioner's discretion, consider the effect of the circumstances, terms, and conditions of the contemplated disposition upon potential competition.

(c) Determinations made for a noncompetitive disposal will, in the commissioner's discretion, be made at any time before the execution of an agreement for the disposal. However, the commissioner will notify the Alaska Royalty Oil and Gas Development Advisory Board in the manner set out in 11 AAC 03.040 before the issuance of a determination that a sale is to be made by a method other than by competitive bid. (Eff. 12/12/80, Register 76; am 8/8/84, Register 91; am 5/22/93, Register 126)

Authority: AS 38.05.020 AS 38.06.050
AS 38.05.183

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 or sent by certified mail to each member of the royalty board. (Eff. 12/12/80, Register 76)

Authority: AS 38.05.020 AS 38.05.183

11 AAC 03.050. PROCEDURE FOR NONCOMPETITIVE DISPOSITION. The commissioner will, in the commissioner's discretion, set out in writing the procedures the commissioner intends to use in making a disposition of royalty oil, gas, or associated substances without competitive bid. If issued, those procedures will be followed unless the commissioner determines in writing that it is in the best interests of the state to not follow those procedures. In conformity with that determination, the commissioner will, in the commissioner's discretion, set out new written procedures to be followed in making the sale, exchange, or disposition. The commissioner will, in the commissioner's discretion, enter into a noncompetitive disposition of

royalty oil, gas, or associated substances without issuing written procedures for that noncompetitive disposition. (Eff. 12/12/80, Register 76; am 8/8/84, Register 91; am 5/22/93, Register 126)

Authority:

AS 38.05.020

AS 38.05.183

11 AAC 03.060. AWARD OF NONCOMPETITIVE DISPOSAL. (a) A noncompetitive disposal will be made to the prospective buyer whose proposal reasonably offers the maximum benefits to the citizens of Alaska as determined by the commissioner. In determining which proposal offers the maximum benefits, the commissioner will consider the criteria described in AS 38.05.183 (e).

(b) The commissioner will make the award determination in writing. In considering the criteria described in AS 38.05.183 (e), the commissioner will state which criteria apply to the proposed disposition, and discuss the weight given to the applicable criteria in determining the maximum benefit to the state. The relative importance given to individual criterion by the commissioner in each disposal does not bind or require similar weighting in other disposals. The determination made under this subsection is the best interests determination described in 11 AAC 03.010 (d). (Eff. 12/12/80, Register 76)

Authority:

AS 38.05.020
AS 38.05.183

AS 38.06.070

11 AAC 03.070. REJECTION OF PROPOSALS. (a) If the commissioner has either (1) solicited proposals for the noncompetitive sale of royalty oil, gas, or associated substances, (2) issued a written determination to dispose of royalty oil, gas, or associated substances by a method other than by competitive bid, or (3) issued written procedures for the noncompetitive disposal of royalty oil, gas, or associated substances as described in 11 AAC 03.050, and the commissioner proposes to reject any proposal or application received as a result of the solicitation, determination, or written procedures, the commissioner will notify the Alaska Royalty Oil and Gas Development Advisory Board in writing before rejecting the proposal or application.

(b) The notification required by (a) of this section will consist of a list of the names of the prospective buyers whose proposals are rejected along with their proposals and any correspondence received from the prospective buyers.

(c) The commissioner will, in the commissioner's discretion, reject unsolicited or uninvited proposals for the noncompetitive disposal of royalty oil, gas, or associated substances without notifying the Alaska Royalty Oil and Gas Development Advisory Board. (Eff. 12/12/80, Register 76; am 8/8/84, Register 91; am 5/22/93, Register 126)

Authority:

AS 38.05.020

AS 38.06.050

11 AAC 03.080. STORAGE CONDITIONS. Repealed 5/22/93.

11 AAC 03.090. MARKET CONDITIONS. Repealed 5/22/93.

11 AAC 03.091. PROVISIONS APPLICABLE TO ROYALTY CONTRACTS.
Repealed 5/22/93.

11 AAC 03.100. DISPOSITION BY COMPETITIVE BID. (a) A disposition of royalty oil, gas, or associated substances by competitive bid will, in the commissioner's discretion, be made without a written determination by the commissioner that the disposition of royalty oil, gas, or associated substances by competitive bidding is in the best interests of the state.

(b) A disposition of royalty oil, gas, or associated substances by competitive bid will, in the commissioner's discretion, be made by the commissioner without notice to the Alaska Royalty Oil and Gas Development Advisory Board; however, the commissioner will follow the procedures set out in 11 AAC 03.210 and 11 AAC 03.240. (Eff. 12/12/80, Register 76; am 8/8/84, Register 91; am 5/22/93, Register 126)

Authority:

AS 38.05.020

AS 38.05.183

11 AAC 03.110. SEALED BIDS. A disposition of royalty oil, gas, or associated substances by competitive bid will be by sealed bid. The bids must be addressed to the commissioner and must be delivered in the manner, to the place, and by the date and time specified in the invitation to bid. Bids will be opened in public at the date, time, and place specified in the invitation to bid, unless the commissioner designates a later time for opening. (Eff. 12/12/80, Register 76; am 8/8/84, Register 91; am 5/22/93, Register 126)

Authority:

AS 38.05.020

AS 38.05.183

11 AAC 03.120. INVITATION TO BID. A disposition of royalty oil, gas, or associated substances by competitive bid will be initiated by the commissioner by issuance of an invitation to bid. The invitation to bid will specify the quantity of oil, gas, or associated substances to be sold, the term of disposition, the point of delivery, and any other terms and conditions of the disposition considered necessary by the commissioner. The commissioner will, in the commissioner's discretion, include a form contract in the invitation rather than specifying terms and conditions. The invitation will specify qualifications of bidders and, if a determination of the qualification of a bidder by the commissioner is required, an explanation of the procedure for qualification. If priorities among bidders are to be assigned, the invitation will include an explanation of the procedure for obtaining a priority designation. The invitation will specify where, when, and how bids may be submitted to the commissioner and will specify the bond or other security which must accompany the bid. The invitation will specify the date, time, and place of bid opening, and the procedures under which the royalty oil will be awarded and contracts for disposition executed. (Eff. 12/12/80, Register 76; am 8/8/84, Register 91; am 5/22/93, Register 126)

Authority:

AS 38.05.020

AS 38.05.183

11 AAC 03.130. SECURITY. The commissioner may require that security, which in his judgment is adequate to ensure performance by a bidder, be submitted either with the bid, with the application for qualification, or at any other time the commissioner considers appropriate. The security may be a bid bond, performance bond, cash deposit, letter of credit or any other form of security prescribed by the commissioner in the invitation to bid. The commissioner will prescribe in the invitation to bid the time of submission of the security, the amount of security, and the terms and conditions of the security. (Eff. 12/12/80, Register 76)

Authority:

AS 38.05.020

AS 38.05.183

11 AAC 03.140. ADVERTISEMENT. The commissioner will give notice of the invitation to bid at least 30 days before the deadline for submission of bids. The commissioner will, in the commissioner's discretion, give notice in national business, financial, petroleum, or other publications. The notice will specify the quantity of oil, gas, or associated substances offered for sale, the terms of the sale, the source of the oil, gas, or associated substances and the point of delivery, the date by which bids are to be received, the qualifications of bidders, any priorities or preferences to (Eff. 12/12/80, Register 76; am 8/8/84, Register 91; am 5/22/93, Register 126)

Authority:

AS 38.05.020

AS 38.05.183

11 AAC 03.150. DISTRIBUTION OF INVITATION TO BID. An invitation to bid will be mailed or personally delivered to any person requesting an invitation after the date of its issuance. Invitations will, in the commissioner's discretion, be mailed to persons who have expressed an interest in purchase of state royalty oil, gas, or associated substances before the issuance of the invitation to bid if a record of those persons was maintained in the commissioner's office. The commissioner, however, is not required to mail invitations to all previously interested persons if they are mailed to some. (Eff. 12/12/80, Register 76; am 8/8/84, Register 91; am 5/22/93, Register 126)

Authority:

AS 38.05.020

AS 38.05.183

11 AAC 03.160. QUALIFICATIONS OF BIDDERS. The commissioner will set the qualifications of persons entitled to bid for royalty oil, gas, or associated substances. If the commissioner finds that the bid award process would be facilitated by determination of those persons who are qualified to bid before the submission of bids, the commissioner will make those determinations in accordance with procedures set out in the invitation to bid. If the invitation to bid requires the advance qualification of bidders, bids will be accepted only from persons who the commissioner determines meet the qualifications of a bidder. (Eff. 12/12/80, Register 76; am 8/8/84, Register 91; am 5/22/93, Register 126)

Authority:

AS 38.05.020

AS 38.05.183

11 AAC 03.170. PRIORITIES AMONG BIDDERS. The commissioner will, in the commissioner's discretion, for a sale by competitive bid, establish special classes of bidders which may include in-state suppliers and processors as defined in 11 AAC 03.190 and 11 AAC 03.200. These special classes may be entitled to priority in receiving an award of royalty oil, gas, or associated substances over the general class of bidders or over each other in the manner specified in the invitation to bid. (Eff. 12/12/80, Register 76; am 8/8/84, Register 91; am 5/22/93, Register 126)

Authority:

AS 38.05.020

AS 38.05.183

11 AAC 03.180. DESIGNATION OF PRIORITY. A bidder is entitled to a priority over general bidders if the bidder meets the requirements of the special classes described in the invitation to bid and applies to the commissioner for a designation of priority rating before submitting a bid for royalty oil, gas, or associated substances. Application must be made in the manner and at the time specified in the invitation to bid. A bidder is not entitled to exercise a priority over general bidders unless the bidder has received designation from the commissioner

under this section and has met any requirements listed in the invitation to bid relating to the bid process. (Eff. 12/12/80, Register 76; am 8/8/84, Register 91; am 5/22/93, Register 126)

Authority:

AS 38.05.020

AS 38.05.183

11 AAC 03.190. IN-STATE PROCESSOR. An "in-state processor" is a firm which possesses, or will possess at the time of delivery of royalty oil, gas, or associated substances, the ability to process crude oil, gas, or associated substances into refined petroleum products at a processing facility owned by it in the state. Additional requirements for inclusion in this class will, in the commissioner's discretion, be prescribed for each disposal of royalty oil, gas, or associated substances in the invitation to bid for that disposal. (Eff. 12/12/80, Register 76; am 8/8/84, Register 91; am 5/22/93, Register 126)

Authority:

AS 38.05.020

AS 38.05.183

11 AAC 03.200. IN-STATE SUPPLIER. An "in-state supplier" is a firm which possesses the ability to process crude oil, gas, or associated substances into refined petroleum products at a processing facility owned by it inside or outside the state, and which sells refined petroleum products to distributors or consumers in the state. Additional requirements for inclusion in this class will, in the commissioner's discretion, be prescribed for each disposal of royalty oil, gas, or associated substances in the invitation to bid for that disposal. (Eff. 12/12/80, Register 76; am 8/8/84, Register 91; am 5/22/93, Register 126)

Authority:

AS 38.05.020

AS 38.05.183

11 AAC 03.210. REJECTION OF BIDS. (a) The commissioner will, in the commissioner's discretion, reject any or all bids received for royalty oil, gas, or associated substances in response to an invitation to bid, for any reason described in AS 38.05.183(b).

(b) The commissioner will, in the commissioner's discretion, reject a bid that does not conform to the requirements of the invitation to bid.

(c) The commissioner will reject a bid for royalty oil that does not offer a price at least equal to the volume-weighted average of the current reported netback prices filed by the lessees for royalty purposes for those filing periods applicable to the term of the disposition. The commissioner will reject a bid for royalty gas that does not offer at least the amount which the state would have received for the gas if the state had taken the gas in-value.

(d) After the award of bids but before the execution of contracts for the disposal of the royalty oil, gas, or associated substances, the commissioner will notify each member of the Alaska Royalty Oil and Gas Development Advisory Board of his proposed rejections by certified mail or personal delivery. (Eff. 12/12/80, Register 76; am 8/8/84, Register 91; am 12/15/84, Register 92; am 9/28/85, Register 95; am 5/22/93, Register 126)

Authority:

AS 38.05.020
AS 38.05.183

AS 38.06.050

11 AAC 03.220. AWARDS. Royalty oil, gas, or associated substances will be awarded to the highest responsible bidder unless a bidder in a special class, as defined in the invitation to bid, exercises a priority over a general bidder. A bidder entitled to exercise a priority may purchase

the royalty oil, gas, or associated substances at a price equal to the price bid by the highest responsible bidder in the manner provided in the invitation to bid. A bidder in a special class is entitled to exercise a priority over a general bidder in the order provided in the invitation to bid. (Eff. 12/12/80, Register 76; am 8/8/84, Register 91; am 5/22/93, Register 126)

Authority:

AS 38.05.020

AS 38.05.183

11 AAC 03.230. CONFERENCE WITH BIDDER. Any bidder who believes that his bid was rejected in error may request a conference with the commissioner to discuss his objections to the commissioner's action. At the conference the bidder shall present his objections to the commissioner in writing. After the conference, the commissioner will send the bidder a written response to his objections. Time periods for requesting a conference and for holding the conference will be set out in the invitation to bid. (Eff. 12/12/80, Register 76)

Authority:

AS 38.05.020

AS 38.05.183

11 AAC 03.240. EXECUTION OF CONTRACT FOR COMPETITIVE DISPOSAL. (a) After the opening of the bids but before the execution of the contracts, the commissioner will indicate the commissioner's intention to either reject all bids, or execute contracts with a bidder or bidders and reject all other bidders by awarding the royalty oil, gas, or associated substances to the successful bidder or bidders. The award may be made orally at the bid opening or in writing if the award is made after the bid opening.

(b) No contract will be executed with the successful bidder or bidders until notification of the intention to reject all other bidders has been given to the Alaska Royalty Oil and Gas Development Advisory Board. (Eff. 12/12/80, Register 76; am 8/8/84, Register 91; am 5/22/93, Register 126)

Authority:

AS 38.05.020
AS 38.05.183

AS 38.06.050

11 AAC 03.250. DEFINITIONS. Unless the context indicates otherwise, in this chapter

(1) "award" means the preliminary identification of the successful bidder or bidders in a disposal of royalty oil, gas, or associated substances by competitive bid;

(2) "commissioner" means commissioner of the Department of Natural Resources;

(3) "disposal or disposition" includes a sale or exchange, but does not include amendments to existing royalty contracts that do not increase the amount of royalty oil, gas, or associated substances delivered or to be delivered under the contract;

(4) "general bidder" means all competitive bidders except those bidders entitled to a priority of any kind;

(5) "present or projected intrastate domestic and industrial needs" means in-state domestic and industrial demand at a competitive market price for the royalty oil, gas, or associated substances. "Competitive market price" includes, but is not limited to, a price established by competitive bid.

(6) For purposes of this chapter, "oil", "gas" and "associated substances" have the meanings set out in 11 AAC 88.185. (Eff. 12/12/80, Register 76; am 8/8/84, Register 91; am 5/22/93, Register 126)

Authority:
AS 38.05.020

PART 3. OIL AND GAS.

Chapter

- 22. (Repealed)
- 24. (Repealed)
- 26. Alaska Royalty Oil and Gas Development Advisory Board (11 AAC 26.010 - 11 AAC 26.300)

CHAPTER 26. ALASKA ROYALTY OIL AND GAS DEVELOPMENT ADVISORY BOARD.

Article

- 1. Administrative Matters (11 AAC 26.010 - 11 AAC 26.120)
- 2. Duties of the Board (11 AAC 26.200 - 11 AAC 26.220)
- 3. General Provisions (11 AAC 26.300)

Editor's notes - Effective July 19, 1981, the regulations of the Alaska Royalty Oil and Gas Development Advisory Board were relocated to 3 AAC 56, as a result of the transfer of the board from the Department of Natural Resources to the Department of Commerce and Economic Development. As of May 11, 1986, the regulations have

been returned to 11 AAC 26 in light of the return of the board to the Department of Natural Resources, by Executive Order No. 61, effective March 15, 1986. The history notes under the sections in 11 AAC 26 carry forward the history of these sections from their location in 3 AAC 56, but not from their earlier location in 11 AAC 26.

ARTICLE 1. ADMINISTRATIVE MATTERS.

Section

- 10. Executive director
- 20. Officers
- 21. Substitute attendance
- 30. Public meetings
- 40. Regular meetings
- 50. Special meetings
- 51. Public hearings
- 60. Executive sessions

Section

- 70. Conference calls
- 80. Documents available to public
- 90. Confidentiality of documents
- 100. Official communications with the board
- 110. Ex parte discussions with prospective purchasers
- 120. Board actions

11 AAC 26.010. EXECUTIVE DIRECTOR. The board will, in its discretion, hire or appoint an executive director and set the terms of his or her employment by majority vote of the board. The executive director shall perform duties assigned by the board. (Eff. 7/19/81, Register 79; am 5/11/86, Register 98)

Authority: AS 38.06.040

11 AAC 26.020. OFFICERS. The officers of the board are a chairman and vice-chairman. The chairman shall preside over meetings of the board. The vice-chairman shall assist the chairman and shall assume the chairman's duties when the chairman is absent. The chairman and vice-chairman will be elected annually from among the public members at the first regular meetings after July 1 of each year. They shall serve until the first meeting after July 1 of the following year or until their successors are elected. (Eff. 7/19/81, Register 79; am 5/11/86, Register 98)

Authority: AS 38.06.025

AS 38.06.040

11 AAC 26.021. SUBSTITUTE ATTENDANCE. Only the commissioners of commerce and economic development, revenue, and natural resources may designate a substitute for attendance for them at the board meetings. Substitutes must be designated, in writing, before each board meeting. Substitutes for the commissioners of commerce and economic development and revenue have full voting power and their presence counts toward a quorum. (Eff. 7/19/81, Register 79)

Authority: AS 38.06.035 AS 38.06.040

11 AAC 26.030. PUBLIC MEETINGS. Subject to the exceptions of this chapter and AS 44.62.310 , the meetings of the board are public. Reasonable public notice will be given for all public meetings of the board. The notice will include the date, time, and place, of the meetings; general topics to be discussed or considered; and the location of any teleconferencing facilities that will be used. (Eff. 7/19/81, Register 79; am 5/11/86, Register 98)

Authority: AS 38.06.035 AS 44.62.310
AS 38.06.040

11 AAC 26.040. REGULAR MEETINGS. The chairman shall set a time for regular meetings. The place of a regular meeting must be set by the chairman at the preceding regular meeting. No separate notice of a regular board meeting need be given to board members. The chairman or his or her designee shall notify absent board members of the place designated for the next regular meeting. (Eff. 7/19/81, Register 79; am 5/11/86, Register 98)

Authority: AS 38.06.035 AS 38.06.040 AS 44.62.310

11 AAC 26.050. SPECIAL MEETINGS. A special meeting of the board may be called at any time by the chairman or a majority of the voting members of the board. At least 14 days' advance notice of a special meeting must be given to members of the board unless the board waives this requirement. (Eff. 7/19/81, Register 79)

Authority: AS 38.06.035 AS 38.06.040 AS 44.62.310

11 AAC 26.051. PUBLIC HEARINGS. The board shall hold public hearings on proposed sales, exchanges, or other disposals of royalty oil or gas to determine whether the proposals comply with AS 38.06.070 . The board shall give at least 14 days' notice before all public hearings. At least one board member must be present at all public hearings. All public hearings must be recorded and made part of the public record. Written testimony may be received and entered into the public record at the public hearing. (Eff. 7/19/81, Register 79)

Authority: AS 38.06.035 AS 38.06.070
AS 38.06.040

11 AAC 26.060. EXECUTIVE SESSIONS. The board may hold meetings, a part of which are executive sessions closed to the public in accordance with AS 44.62.310 (b) and (c). The board, in its discretion, will hold an executive session if it is necessary for the board to discuss or otherwise reveal information which the board has voted to accept as confidential information under 3 AAC 56.090. (Eff. 7/19/81, Register 79)

Authority:

AS 38.06.035
AS 38.06.040

AS 38.06.060
AS 44.62.310

11 AAC 26.070. CONFERENCE CALLS. The board will, in its discretion, meet and carry out the business of the board through the use of a telephone conference call. Attendance and participation at meetings by members of the public or members of the board may be by teleconferencing. Agency materials that will be considered at the meeting will be made available at the teleconference locations. (Eff. 7/19/81, Register 79; am 5/11/86, Register 98)

Authority:

AS 38.06.035

AS 38.06.040

AS 44.62.310

11 AAC 26.080. DOCUMENTS AVAILABLE TO PUBLIC. The votes of board members will be recorded and made available to the public. Minutes compiled by the board at open sessions of meetings of the board which are used by the board as an official record of what transpired during those sessions are public records and are open to reasonable inspection by the public and are reasonably available for copying. (Eff. 7/19/81, Register 79)

Authority:

AS 09.25.110
AS 09.25.120

AS 38.06.010
AS 38.06.035

AS 38.06.040

11 AAC 26.090. CONFIDENTIALITY OF DOCUMENTS. (a) All documents or records submitted to or held by the board are public. However, a document or record in the possession or control of the board will not be available to, nor will a discussion of the document or record be open to the public if a majority of the board members determines, in accordance with this section, that the document or record contains confidential business or marketing information, the protection of which is essential to the person who has submitted them to the board or, in the judgment of the board, is essential to the best interests of the state.

(b) The board may receive and maintain confidential information under the following terms, conditions, and procedures:

(1) Qualifications. Any person or other entity having official business with the board may request that certain documents be received and maintained in confidence.

(2) Board Presentation. The party desiring to submit confidential information shall appear before the board during a regular public meeting, describe the nature of the confidential information and request that the board receive the information in confidence.

(3) Only confidential business or marketing information as defined in AS 38.06.060 will be considered for acceptance as confidential information.

(4) Vote of Board Required. Before viewing or receiving confidential information, the board shall determine, by majority vote, if the information will be received and maintained as confidential. The vote must be recorded and entered into the minutes of the meeting.

(5) Nondisclosure Letter Agreement. Before viewing or receiving confidential information, the board shall authorize a person and the party submitting confidential information to sign the board's standard-form nondisclosure letter agreement. The agreement must include a complete inventory of all information received as confidential; a distribution list of all persons to receive copies, have access, or view the confidential information; a verbatim copy of AS 38.06.060 relating to the board's authority to receive the confidential information; a copy of this section and other terms approved by the board relating to the board's agreement to maintain the information confidential.

(6) Distribution of Confidential Information. The board shall distribute confidential information in accordance with the nondisclosure letter agreement but only after each potential recipient of confidential information has signed the nondisclosure letter agreement and agrees to maintain the information in confidence. Confidential documents must be returned to the board after they have served their purpose.

(7) Records of Confidential Information. Confidential documents will be marked "confidential - Alaska Royalty Oil and Gas Development Advisory Board, Serial Number _____, page _____ of _____ ." The board shall record the receipt of confidential information in a log designed for this purpose. The log is available to the public. Serial numbers for each document will be assigned by the board.

(8) Security of Confidential Information. Confidential documents must be retained in separate locked files in order to maintain security.

(9) Declassification of Documents. Confidential documents and records will be held as confidential for a period of three years, after which they will be placed in the public file. During the three-year period, confidential information will be reviewed annually by the board to ensure that those documents continue to meet the standards of confidentiality established by the board. By majority vote, the board may request declassification of confidential documents from the party submitting them. If the submitting party agrees, the document will be marked "Declassified" and placed in the public file. The disposition of all declassified documents must be recorded in the confidential documents log.

(10) Extra Copies of Confidential Documents. Copies of confidential documents returned to the board by those on the distribution list will be destroyed and noted in the confidential log. (Eff. 7/19/81, Register 79)

Authority:

AS 38.06.010
AS 38.06.040

AS 38.06.060

11 AAC 26.100. OFFICIAL COMMUNICATIONS WITH THE BOARD. All official communication with the board must be in writing and addressed to the chairman, c/o the Alaska Department of Natural Resources, Division of Oil and Gas, P.O. Box 7034, Anchorage, Alaska 99510-7034, unless otherwise directed by the board. (Eff. 7/19/81, Register 79; am 5/11/86, Register 98)

Authority:

AS 38.06.040

11 AAC 26.110. EX PARTE DISCUSSIONS WITH PROSPECTIVE PURCHASERS. No member of the board other than the commissioner of natural resources may engage in substantive ex parte discussions with a prospective purchaser of royalty oil or gas. (Eff. 7/19/81, Register 79; am 5/11/86, Register 98)

Authority:

AS 38.06.040

11 AAC 26.120. BOARD ACTIONS. The votes by the board shall be recorded and made part of the public record. A vote shall be taken regarding

- (1) receipt of confidential information;
- (2) approval of the royalty oil and gas development plan;
- (3) resolutions pertaining to recommendations and directions to the commissioner of natural resources;

- (4) resolutions pertaining to recommendations relating to proposed sale, exchange, encumbrance, or other disposition of royalty oil and gas;
- (5) calling of public hearing. (Eff. 7/19/81, Register 79)

Authority:	AS 38.06.010	AS 38.06.040	AS 38.06.070
	AS 38.06.035	AS 38.06.050	

ARTICLE 2. DUTIES OF THE BOARD.

Section

- 200. Development plans for royalty oil and gas
- 210. Recommendations and directions to commissioner of natural resources
- 220. Review and recommendations of proposed sales

11 AAC 26.200. DEVELOPMENT PLANS FOR ROYALTY OIL AND GAS. (a) The board will, in accordance with the criteria set out in AS 38.06.070, develop a plan for the wise development of the state's oil and gas royalty interests which is consistent with growth of the private sector of the economy, environmental standards required by law, and public fiscal stability.

(b) The plan shall be prepared and submitted to the governor, Department of Natural Resources, Department of Commerce and Economic Development, and the legislature annually. The board shall solicit comments from these agencies and include the comments received in the plan.

(c) The plan shall include a statement of state policy relating to disposals, royalty board policy guidelines, recommended contract terms and conditions, recommended procedures for sale of royalty oil and gas which includes

- (1) qualifications of purchasers;
- (2) procedures for competitive bidding;
- (3) procedures for sales by negotiated contract; and
- (4) procedures for solicitations of bids or applications.

The plan shall include specific goals and objectives and appropriate strategies for accomplishment. There will be a short-term (five years) and a long-term plan (10 years). (Eff. 7/19/81, Register 79)

Authority:	AS 38.06.040	AS 38.06.055
	AS 38.06.050	AS 38.06.070

11 AAC 26.210. RECOMMENDATIONS AND DIRECTIONS TO COMMISSIONER OF NATURAL RESOURCES. (a) The board shall obtain updated lists from the Department of Natural Resources of royalty oil and gas that is available for disposal. The board will, in its discretion, recommend to the commissioner of natural resources the conditions relating to the sale, delivery, transportation, refining or processing of oil or gas which he may include in the offer and sale of oil or gas obtained by the state as royalty under AS 38.05.182 .

(b) Recommendations and directions to the commissioner of natural resources from the board will be made by resolution.

(c) Recommendations for each sale may include price guidelines, quantity to be sold, instate use requirements, term of sale, and preferential purchasers.

(d) Recommendations for each sale may include procedures for solicitations of bids and applications, qualifications of purchasers, competitive bidding, and contract negotiations. (Eff. 7/19/81, Register 79)

Authority:

AS 38.06.040
AS 38.06.050

AS 38.06.055
AS 38.06.070

11 AAC 26.220. REVIEW AND RECOMMENDATIONS OF PROPOSED SALES. (a) If legislative approval is required in accordance with AS 38.06.055(a), proposed contracts or agreements must be received by the board at least 14 days before execution by the commissioner of natural resources and submission to the legislature.

(b) In accordance with AS 38.06.050 (a), "prior review" means that the majority of the board members in attendance at a meeting of at least a quorum voted on the action proposed by the commissioner of natural resources and the final tally of votes of members of the board for and against the proposed action is recorded at the end of a document signed by the chairman setting out the recommendations to the legislature by the board.

(c) In accordance with AS 38.06.050 (b), the notice of rejection of any bid or application must include any proposals received and correspondence from the rejected bidders.

(d) In accordance with AS 38.06.050 (c), a written notice of waiver of competitive bidding must be received by the board. The board will, in its discretion, provide the commissioner of natural resources with its written comments and recommendations relating to the waiver.

(e) Repealed 5/11/86.

(f) The board will, after the receipt of sales contracts or agreements relating to proposed sales, exchanges, or other disposals of royalty oil and gas, recommend to the legislature that the sale be approved or disapproved. The report may include the recommendations and analysis of the majority of the board, a minority report if necessary, a legal report, a record of the public hearing, and a technical or staff report. (Eff. 7/19/81, Register 79; am 5/11/86, Register 98)

Authority:

AS 38.06.040
AS 38.06.050
AS 38.06.055
AS 38.06.070

ARTICLE 3. GENERAL PROVISIONS.

Section

300. Definitions

11 AAC 26.300. DEFINITIONS. In this chapter and in AS 38.06, unless the context otherwise requires

(1) "board" means the Alaska Royalty Oil and Gas Development Advisory Board;

(2) "state officers or employees" does not include members of the University of Alaska faculty and staff. (Eff. 7/19/81, Register 79)

Authority:

AS 38.06.040

