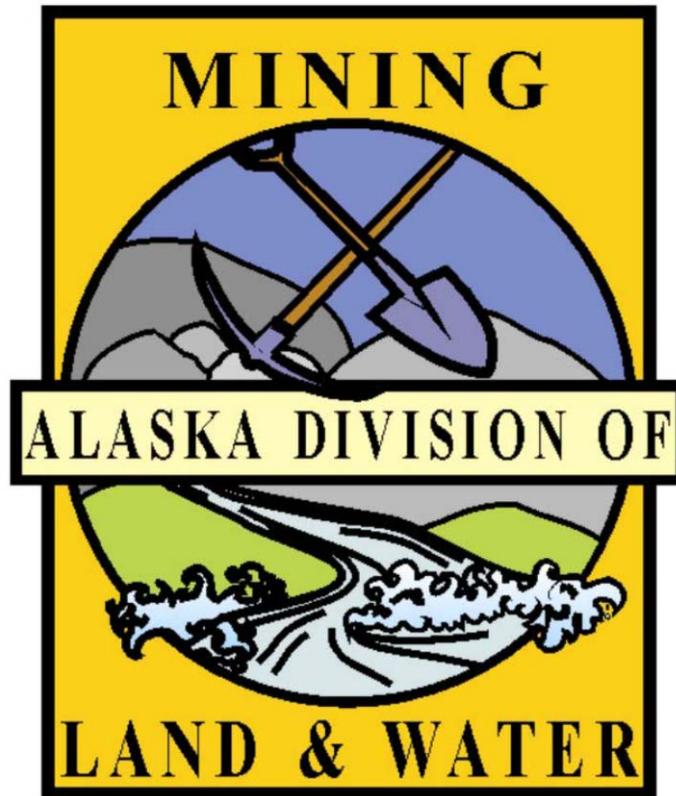


State of Alaska
MINING
Laws & Regulations



As contained in the Alaska Statutes, Alaska Administrative Code and
Article 8 of the Alaska State Constitution

2014

Department of Natural Resources
Division of Mining Land and Water

Revised December 2014

Mining Laws and Regulations

As contained in the Alaska Statutes and Alaska Administrative Code 2014

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Section I: Mining Rights on Public Land Statute

Title 38. Public Land Chapter 38.05 ALASKA LAND ACT

Article 8. Mining Rights

Sec. 38.05.185. Generally.

(a) The acquisition and continuance of rights in and to deposits on state land of minerals, which on January 3, 1959, were subject to location under the mining laws of the United States, shall be governed by [AS 38.05.185 - 38.05.275](#). Nothing in [AS 38.05.185 - 38.05.275](#) affects the law pertaining to the acquisition of rights to mineral deposits owned by any other person or government. The director, with the approval of the commissioner, shall determine that land from which mineral deposits may be mined only under lease, and, subject to the limitations of [AS 38.05.300](#), that land that shall be closed to location under [AS 38.05.185 - 38.05.275](#). State land may not be closed to location under [AS 38.05.185 - 38.05.275](#) except as provided in [AS 38.05.300](#) and unless the commissioner makes a finding that mining would be incompatible with significant surface uses on the state land. State land may not be restricted to mining under lease unless the commissioner determines that potential use conflicts on the state land require that mining be allowed only under written leases issued under [AS 38.05.205](#) or the commissioner has determined that the land was mineral in character at the time of state selection. The determinations required under this subsection shall be made in compliance with land classification orders and land use plans developed under [AS 38.05.300](#).

(b) The failure on the part of a mining lessee or a locator to comply strictly with [AS 38.05.185 - 38.05.275](#) and regulations adopted under those sections does not invalidate the rights of a mining lessee or a locator if it appears to the satisfaction of the commissioner that the mining lessee or the locator complied as nearly as possible under the circumstances of the case, and that no conflicting rights are asserted by any other person.

(c) Unless otherwise provided, the usages and interpretations applicable to the mining laws of the United States as supplemented by state law apply to [AS 38.05.185 - 38.05.275](#).

Sec. 38.05.190. Qualifications.

(a) The right to acquire exploration and mining rights under [AS 38.05.185 - 38.05.275](#) may be acquired or held only by

- (1) citizens of the United States at least 18 years of age;
- (2) legal guardians or trustees of citizens of the United States under 18 years of age on behalf of the citizens;
- (3) persons at least 18 years of age who have declared their intention to become citizens of the United States;
- (4) aliens at least 18 years of age if the laws of their country grant like privileges to citizens of the United States;
- (5) corporations organized under the laws of the United States or of any state or territory of the United States and qualified to do business in this state;
- (6) associations of persons described in (1) - (5) of this subsection.

(b) An unqualified person who acquires an interest in exploration or mining rights by operation of law shall be allowed two years in which to become qualified or to dispose of the interest to a qualified person.

Sec. 38.05.195. Mining claims.

(a) Rights to deposits of minerals subject to [AS 38.05.185 - 38.05.275](#) in or on state land that is open to claim staking may be acquired by discovery, location, and recording as prescribed in [AS 38.05.185 - 38.05.275](#). The locator has the exclusive right of possession and extraction of the minerals subject to [AS 38.05.185 - 38.05.275](#) lying within the boundaries of the claim.

(b) The locator may locate a claim using one of the following methods:

- (1) a locator may locate a claim based on the ground location of a complete quarter section or quarter-quarter section of a township on a rectangular survey system approved by the commissioner; a claim established in this manner may be known as the meridian, township, range, section, and claim system location, or MTRSC location; a locator using the MTRSC system to locate a claim shall in good faith mark the corners of a location as closely as practical to the existing quarter section or quarter-quarter section of the rectangular survey system approved by the commissioner; the corners marked on the ground of a claim established in accordance with this paragraph and regulations of the commissioner control in the event of a conflict over boundaries for the quarter section or quarter-quarter section on the protracted or actual survey approved by the commissioner; or
- (2) a locator may locate a claim based on the staking of a ground location in which the claim may not exceed 1,320 feet in its longest dimension; the boundaries of a claim based on staking and located after January 1, 1985, shall run in the four cardinal directions unless the claim is a fractional claim or the commissioner determines that staking in compliance with this paragraph is impractical because of local topography or because of the location of other claims; a claim established in this manner may be known as a non-MTRSC location.

(c) A location's corners shall be distinctly marked on the ground in the manner prescribed by the commissioner, and a notice of location shall be attached to a monument at the claim's northeast corner in the manner and containing the information required by the commissioner. Within 45 days after the date of attaching the notice of location on the monument, the locator shall record a certificate of location in the recording district where the claim is located. The certificate of location must contain the information required by the commissioner.

(d) Locations may be amended in the manner and with the effect prescribed in [AS 38.05.200](#). Annual labor shall be performed and statements of annual labor recorded as prescribed in [AS 38.05.210 - 38.05.235](#).

Sec. 38.05.200. Changes in locations and amended notices.

Notices may be amended at any time and monuments changed to correspond with the amended location but a change may not be made that interferes with the rights of others. Whenever monuments are changed or an error is made in the notice or in the certificate of location, an amended certificate of location shall be recorded in the same manner and with the same effect as the original certificate.

Sec. 38.05.205. Mining leasing. (See Section III: Mining Leases for other mineral leasing laws and regulations)

(a) Prior discovery, location, and recording shall initiate prior rights to mineral deposits subject to [AS 38.05.185](#) - 38.05.275 in or on state land, other than submerged land, which is open to mining leasing. Locations shall be made and certificates of location recorded in accordance with [AS 38.05.195](#). If the located land is available only for leasing, the director shall publish in a paper of general circulation in the area of the location, notice of the recording of the location and notice that a mineral lease will be issued. The notice may be combined with notices of locations either in the same general area or statewide. Unless a conflicting location exists, no later than two weeks after publication of the notice, an application form for a mining lease shall be mailed to the locator by the director. A lease application shall be filed with the director by the locator within 90 days after receipt of the form. If the located land is not available for leasing, notice shall be given the locator by the director and the locator's prior rights shall terminate. A mining lessee has the exclusive rights of possession and extraction of all minerals subject to [AS 38.05.185](#) - 38.05.275 lying within the boundaries of the lease or location. Mining leases may be issued for one location or for a group of contiguous locations held in common. Minerals may not be mined and marketed or used until a lease is issued, except for limited amounts necessary for sampling or testing.

(b) *[Repealed, Sec. 10 ch 101 SLA 1989].*

(c) A mining lease shall be for any period up to 55 years, and is renewable if requirements for the lease remain satisfied. Annual rental and production royalties shall be paid as required under [AS 38.05.211](#) and 38.05.212. A valid mining claim located and held under [AS 38.05.195](#) may be converted to a lease at any time upon application by the owner, and issuance by the commissioner. Rights granted by a mining lease may not be exercised until the lease has been filed for record in the recording district where the land is located.

Sec. 38.05.207. Production license. [Repealed, Sec. 19 ch 56 SLA 1997].

Repealed or Renumbered.

Sec. 38.05.210. Annual labor.

(a) Labor shall be performed or improvements made annually on or for the benefit or development of each mining claim, leasehold location, and mining lease on state land except that, where adjacent claims, leasehold locations, or mining leases are held in common, the expenditure may be made on any one claim, leasehold location, or mining lease. The commissioner shall establish the date of the commencement of the year during which the labor or improvements are to be performed. Labor shall be performed at the following annual rates:

(1) \$100 per claim, leasehold location, or lease if the claim, leasehold location, or lease is a quarter-quarter section MTRSC claim, leasehold location, or lease;

(2) \$400 for each quarter section MTRSC claim, leasehold location, or lease; and

(3) \$100 for each partial or whole 40 acres of each mining claim, leasehold location, or lease not established using the MTRSC system. If more work is performed than is required by this section to be performed in any one year, the excess value may be applied against labor required to be done during the subsequent year or years, for as many as four years.

Instead of performing annual labor, the holder of a claim, leasehold location, or mining lease may make a cash payment to the state equal to the value of the labor required by this subsection.

(b) During the year in which annual labor is required or within 90 days after the close of that year, the owner of the mining claim, leasehold location, or mining lease, or some other person having knowledge of the facts shall record with the recorder of the district in which the claim, leasehold location, or mining lease is located a signed statement setting out the information, as may be required by the commissioner, concerning the annual labor of the preceding year, any labor in excess of that required for the preceding year, and any payment of cash instead of annual labor. The statement, properly recorded, is prima facie evidence of the performance of the labor. The failure of one of several co-owners to contribute the proportion of the expenditures required for annual labor from the co-owner shall be treated in accordance with [AS 38.05.215](#) - 38.05.235.

(c) The statement of annual labor required in (b) of this section may be amended within two years of the date by which the annual labor statement was required to be recorded. An amended statement shall be recorded for record in the same manner as the original statement. Additional labor claimed in an amended statement may not be applied against labor required to be done during a subsequent year.

(d) *[Repealed, Sec. 10 ch 101 SLA 1989].*

Sec. 38.05.211. Annual rental.

(a) The holder of each mining claim, leasehold location, prospecting site, and mining lease, including a mining lease under [AS 38.05.250](#), shall pay, in advance, rental for the right to continue to hold the mining claim, leasehold location, prospecting site, and mining lease, including a mining lease under [AS 38.05.250](#). Rental is due and payable as follows:

- (1) the rental amount for a prospecting site is fixed at \$200 for the two-year term of the site;
- (2) annual rental for a mining claim, leasehold location, or mining lease shall be based on the number of years since a mining claim, a leasehold location, or a mining lease's predecessor claim or leasehold location was first located; the annual rental amounts for a mining claim, leasehold location, or mining lease are as follows:

Annual Rental for Each Location

(11 AAC 86.221(b))

Number of Years for Location	Quarter-Section Size MTRSC Location	Quarter-Quarter Section MTRSC Location	Traditional Mining Claim or Leasehold Location
1 (Day 1 - September 1 st)	\$140	\$35	\$35
2 - 5	\$140	\$35	\$35
6 - 10	\$280	\$70	\$70
11 or More	\$680	\$170	\$170

Annual Rental for Each Lease

(11 AAC 86.313(c))

Number of Years of Lease	Rental Amount Per Acre for Mining Lease
1 (Day 1 - September 1 st)	\$0.88
2 - 5	\$0.88
6 - 10	\$1.75
11 or More	\$4.25

(3) the annual rental in any year for each quarter section claim, leasehold location, or lease based on the MTRSC system is four times the rental amount for a quarter-quarter section mining claim, leasehold location, or lease in that year.

(b) A claim, leasehold location, or mining lease located on or before August 31, 1989, is considered to have been first located on August 31, 1989, for purposes of determining the amount of rental under this section.

(c) The rental for each year shall be credited against the production royalty under [AS 38.05.212](#) as it accrues for that year.

(d) The rental amount established under this section shall be revised by the commissioner as provided in this section based on changes in the Consumer Price Index for all urban consumers, Anchorage Metropolitan Area (Semi-Annual Average) compiled by the Bureau of Labor Statistics, United States Department of Labor, as revised, rebased, or replaced by that bureau. The reference base index is the index for January - June 1989, as revised or rebased by that bureau. The rental amount shall be increased or decreased, as appropriate, by an amount equal to the change in the index described in this subsection rounded to the nearest whole \$5 unit. The commissioner shall calculate the change in the rental amount each 10 years and, if the rental amount must be revised, shall adopt a regulation establishing the revised rental amount. A revised rental amount applies to a rental payment if the regulation establishing the revised rental amount took effect at least 90 days before the date the rental payment is due.

(e) The locator of a new claim or leasehold location in accordance with the MTRSC system or the locator of a non-MTRSC location claim or leasehold location who amends the claim or leasehold location in accordance with the MTRSC system is entitled to a reduced rental under this section for the rental year following establishment of the new location or amendment of a non-MTRSC location. The reduced annual rental is 50 percent of the annual rental that would otherwise be due in the following rental year.

Sec. 38.05.212. Production royalty.

(See Section VI: Production Royalty and Mining License Tax)

Sec. 38.05.215. Notice to co-owners to contribute to cost of annual labor or improvements and forfeiture for failure to contribute.

If one of several co-owners fails to contribute the proportion of the expenditures required for annual labor from the co-owner, the co-owners who have performed the labor or made the improvements may, at the expiration of the annual labor year, give the delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days. If at the expiration of 90 days after the service of the notice in writing, or 90 days after the completion of the publication the delinquent fails or refuses to contribute the required proportion of the expenditures, the interest of the delinquent co-owner in the claim is forfeited to the co-owners who have made the expenditures.

Sec. 38.05.220. Recording the notice to contribute and affidavits.

(a) Within 120 days after personal service, or within 120 days after the completion of publication of the notice provided for in [AS 38.05.215](#), the co-owner who claims the forfeiture shall record in the office of the recorder of the recording district in which the claim is located a copy of the notice with the following affidavits attached:

- (1) an affidavit of the person serving the notice giving the time, place, and manner of service and by whom and upon whom the service was made or, if service was made by publication in a newspaper, an affidavit of the editor, publisher, printer, or foreman of the newspaper giving the name of the newspaper, the place where, and the time during which the notice was published and the number of insertions;
- (2) an affidavit of the co-owner who claims the forfeiture stating that neither the delinquent co-owner nor any person acting for the delinquent co-owner has paid or tendered to the affiant the delinquent's proportion of the expenditures for annual labor or improvements.

(b) The record of the notice and affidavits or a certified copy of it is prima facie evidence of the facts contained in it.

Sec. 38.05.225. Lienholder may perform the annual labor.

A person who holds a claim to or lien upon an unpatented mining claim under a certificate of sale, mortgage, attachment, levy, judgment, or other lien may, when necessary for the protection of the lien or claim, go upon the mining claim and perform or cause to be performed the annual labor required by law to prevent forfeiture. Before performing the labor the claimant or lien holder shall mail a written notice of intent to perform the annual labor on the claim to the owner of the claim at the last known address of the owner of the claim.

Sec. 38.05.230. Lien for performance of annual labor.

(a) The person performing or causing to be performed annual labor upon an unpatented mining claim as provided in [AS 38.05.225](#) shall have a lien upon the claim for the assessment work, including the reasonable cost of transportation to and from the claim incurred in doing the work. The lien is enforced either as in other suits for the foreclosure of liens upon real property or as supplemental accruing costs in an action, if any, then pending in which the claim has been levied upon by attachment, execution, or other court process.

(b) A person claiming a lien under this section shall, within 90 days after the completion of the annual labor for which the lien is claimed, record in the office of the recorder of the recording district in which the property on which the lien is claimed is situated a notice of claim of lien, verified by the oath of the person claiming the lien or that of some other person having knowledge of the facts, and stating the name of the owner or reputed owner of the property, the amount of the claim, the time of the performance of the annual labor for which the lien is claimed, the nature of the labor done or improvements made, and the amount of the claim, including costs of transportation, after deducting all just credits and offsets.

(c) An independent suit or action brought to enforce a lien under this section shall be commenced within six months after the recording of the notice of claim of lien.

Sec. 38.05.235. Lien for annual labor is independent of other liens. The lien given for the performance of annual labor by [AS 38.05.230](#), if the work is done in good faith and necessarily for the protection either of possession under a certificate of sale or of an attachment, levy, mortgage, judgment, or other lien, remains in effect notwithstanding the contemporaneous or subsequent vacation, dissolution, or setting aside of, or redemption from, the certificate of sale, attachment, levy, mortgage, judgment, or other lien.

Sec. 38.05.240. Labor defined for [AS 38.05.210](#) - 38.05.235.

In [AS 38.05.210](#) - 38.05.235, "labor" includes geological, geochemical, geophysical, and airborne surveys conducted by qualified experts and verified by a detailed report filed in the recording district office in which the claim, leasehold location, or mining lease is located which sets out fully

- (1) the location of the work performed in relation to the point of discovery and boundaries of the claim, leasehold location, or mining lease,
- (2) the nature, extent, and cost of it, and
- (3) the name, address, and professional background of the person conducting the work. The commissioner, by regulation, shall define the nature of acceptable survey work and the qualifications of a person competent to perform this work. The airborne surveys, however, may not be applied as labor for more than two consecutive years or for more than a total of five years on any one mining claim, leasehold location, or mining lease, and each of those surveys shall be nonrepetitive of any previous survey on the same claim, leasehold location, or mining lease.

Sec. 38.05.242. Definitions for [AS 38.05.210](#) - 38.05.240. In [AS 38.05.210](#) - 38.05.240,

- (1) "**airborne survey**" means a survey from the air for mineral deposits by the proper application of magnetometers, electromagnetic input systems, infrared detectors, side-looking radar, vertical and panoramic cameras, and other devices as they relate to the search for and discovery of mineral deposits;
- (2) "**geochemical surveys**" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits;
- (3) "**geological surveys**" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits;
- (4) "**geophysical surveys**" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuances in geological formations;

(5) "**MTRSC system**" means the system described in [AS 38.05.195\(b\)\(1\)](#) based on the ground location of a complete quarter section or quarter-quarter section of a township on a rectangular survey system;

(6) "**qualified expert**" means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys, as the case may be.

Sec. 38.05.245. Prospecting sites.

(a) Before the discovery of valuable minerals, an exclusive right to prospect by geophysical, geochemical, and similar methods may be acquired by establishing a prospecting site in accordance with the MTRSC system and regulations prescribed by the commissioner. A certificate of location shall be recorded in the recording district where the prospecting site is located within 45 days after posting the notice of location. The locator of a prospecting site has the exclusive right to stake mining claims or leasehold locations within the boundaries of the site. In this subsection, "**MTRSC system**" means the system described in [AS 38.05.195\(b\)\(1\)](#) based on the ground location of a complete quarter section or quarter-quarter section of a township.

(b) A prospecting site location may not include within its exterior boundaries, nor shall its boundaries be coincident with more than one boundary of any mining claim, mining leasehold location, or land under a mining lease, unless the locator of the prospecting site is also the owner, optionee, or lessee of said mining property. If such mining property or area is so included or bounded, the prospecting site is void.

(c) A prospecting site remains in effect for two years after the notice of location is attached to a monument at the northeast corner of the site if the one-time rental payment is made within 45 days of location and the work requirements are met. The two-year term begins on the date the notice of location is attached to the monument and may not be extended. During each year, work of a type compatible with the purpose of this section and acceptable to the director shall be done. The minimum expenditure for the work shall be established by the commissioner uniformly for all prospecting sites. Where adjacent prospecting sites are held in common, the expenditure may be made on any one or more locations. If a prospecting site expires, neither the locator nor a successor in interest of the locator may again hold the same prospecting site or any portion of it, as a prospecting site, for a period of one year following the date of expiration or abandonment.

Sec. 38.05.250. Prospecting permits and leases on tide and submerged land.

(a) The exclusive right to prospect for deposits of minerals subject to [AS 38.05.185 - 38.05.275](#) in or on tide and submerged state land may be granted by a permit issued by the director. A permit shall be granted to the first qualified applicant. A permit may not include an area larger than 2,560 acres, subject to the rule of approximation. Land subject to a prospecting permit shall be as compact in form as possible taking into consideration the area involved. The term of the permit shall be 10 years. Prospecting permits shall be conditioned upon payment of rental against which credit shall be given for useful expenditures on land covered by the permit or group of contiguous permits under common ownership or assignment. Excess expenditures may be applied against rentals due for the following four years. The rental shall be \$3 per acre for the first two-year period of the permit, payable on the second anniversary of the permit and \$3 per acre for each following year, payable annually on the anniversary date of the permit. Minerals from land under a prospecting permit may not be mined and marketed or used, except for limited amounts necessary for sampling or testing. A person may not take or hold prospecting permits for minerals on state land under this section exceeding in the aggregate 300,000 acres. A person may not take or hold leases for minerals on state land under this section exceeding in the aggregate 100,000 acres.

(b) A noncompetitive lease shall be granted to a holder of a prospecting permit for so much of the land subject to the permit as is shown to the satisfaction of the director to contain workable mineral deposits. Submerged land containing known deposits of minerals subject to [AS 38.05.185 - 38.05.275](#) may, in the discretion of the director, be offered by competitive bid. The land shall be leased to the qualified person offering the highest amount of cash bonus.

(c) Each submerged land mining lease shall be for a period of up to 20 years and for so long as there is production in paying quantities from the leased area. A submerged land mining lease may be renewed for a period of up to 20 years at the discretion of the director if the director determines that the renewal is in the best interests of the state.

(d) The commissioner may, on the request of the lessee, assent to the suspension of operation and production under a lease whenever in the judgment of the commissioner the suspension is necessary to promote development of the lease or the lease cannot be successfully operated under its terms. The payment of acreage rental may be suspended during the period of suspension of operation and production. The suspension of the lease shall extend the term of the lease by adding the period of suspension to the lease. The commissioner may extend the term of a nonproducing lease on an application by the lessee accompanied by a showing that the lessee is reasonably close to attaining production and that, despite diligent good faith efforts by the lessee, the lessee is not able to produce due to force majeure, depressed market conditions, or other situations beyond the reasonable control of the lessee. A suspension or extension granted under this subsection may not exceed two years.

Sec. 38.05.252. Extralateral rights under shore, tide, and submerged land.

(a) Extralateral rights under shoreland, tideland, and submerged land are confirmed and granted to an owner of a lode mining claim located before January 3, 1959, under the mining laws of the United States.

(b) In this section, "**extralateral rights**" means rights given to an owner of a mining claim under 30 U.S.C. 26 to follow, and mine, any vein or lode the apex of which lies within the boundaries of the location of the surface of the mining claim, notwithstanding that the course of the vein or lode on its dip or downward direction may so far depart from the perpendicular as to extend beyond the planes which would be formed by the vertical extension downwards of the sidelines of the location.

Sec. 38.05.255. Surface use of land or water.

(a) Surface uses of land or water included within a mining property by the owners, lessees, or operators shall be limited to those necessary for the prospecting for, extraction of, or basic processing of minerals and shall be subject to reasonable concurrent uses. Leases for millsites, tailings disposal, and other mine related facilities may be issued by the director. The leases shall be conditioned upon payment of a reasonable annual rent for the lease and restricted to uses approved by the director. Timber from land open to mining without lease, except timberland, may be used by a mining claimant or prospecting site locator for the mining or development of the location or adjacent claims under common ownership. On other land, timber may be acquired as provided in this chapter. Use of water shall be made in accordance with [AS 46.15](#).

(b) A lease issued under this section is exempt from the provisions of [AS 38.05.075](#) - 38.05.080.

Sec. 38.05.260. Water rights where claim includes both banks of a stream. [Repealed, Sec. 2 ch 50 SLA 1966. For current law see [AS 46.15](#)]. Repealed or Renumbered

Sec. 38.05.265. Abandonment.

(a) Failure to properly record a certificate of location or a statement of annual labor, pay any required annual rental, or pay any required production royalty as required by [AS 38.05.185](#) - 38.05.200, 38.05.210 - 38.05.245, 38.05.252 - 38.05.275, and by regulations adopted under these sections constitutes abandonment of all rights acquired under the mining claim, leasehold location, or prospecting site involved, and the claim, leasehold location, or prospecting site is subject to relocation by others, unless the failure constituting the abandonment is cured under (b) of this section. A locator or claimant of an abandoned location or a successor in interest may not relocate the claim, leasehold location, or prospecting site until one year after abandonment. The locator of an abandoned prospecting site may locate a claim or leasehold location on that site at any time. A statement of annual labor that does not accurately set out the essential facts is void and of no effect. If an annual rental or a royalty payment is deficient but is otherwise timely paid, abandonment does not result if full payment is made within

(1) the period prescribed by a deficiency notice from the commissioner; or

(2) 30 days after a final judgment establishing the amount due if the deficiency amount due was contested.

(b) Unless another person has located a mining claim or leasehold location that includes all or part of the mining claim or leasehold location abandoned under (a) of this section or the area is closed to mineral location under [AS 38.05.185](#) - 38.05.275, a person may cure the failure to record or pay that constituted the abandonment and cure the abandonment by

(1) properly recording a certificate of location or a statement of annual labor, paying any required annual rental, and paying any required production royalty; and

(2) paying a penalty equal to the annual rent for the mining claim or leasehold location that was abandoned under (a) of this section.

Sec. 38.05.270. Transfers. The sale, lease, or other transfer of mining property or interest in mining property shall be recorded or shall be approved by the director in compliance with such regulations as the commissioner may adopt. The heirs and assigns of mining property or interest in mining property have the same rights and duties as their predecessors.

Sec. 38.05.275. Recognition of locations.

(a) Mining locations made on state land, including shoreland, tideland, or submerged land, or state selected land, under [AS 38.05.185](#) - 38.05.275 or in the manner described in [AS 27.10](#), acquire for the locator mining rights under [AS 38.05.185](#) - 38.05.275, subject to existing claims and to any denial of or restriction in the tentative approval of state selection or patent of the land to the state. If shoreland, tideland, or submerged land is included in a mining location or within the projected boundaries of a mining location made in accordance with this section, the locator shall record a certificate of location under [AS 38.05.195](#). The certificate of location must identify the position of the mining location in the system of rectangular or protracted surveys. If the mining location is made in the manner described in [AS 27.10](#), the commissioner may require that the locator amend the mining location to conform with [AS 38.05.185](#) - 38.05.275 and thereafter to comply with the requirements of [AS 38.05.185](#) - 38.05.275.

(b) In this section, "**state selected land**"

(1) means land for which the state has filed a selection application with the United States under Sec. 6 of the Alaska Statehood Act, as amended, regardless of the validity or effect of the application, if the selection described in the application has not been rejected or relinquished;

(2) does not include land described in (1) of this subsection for which a regional corporation organized under 43 U.S.C. 1606(a), as amended, a village corporation organized under 43 U.S.C. 1607(a), as amended, a Native group corporation that qualifies for a land conveyance under 43 U.S.C. 1613(h)(2), as amended, or a Native urban corporation that qualifies for a land conveyance under 43 U.S.C. 1613(h)(3), as amended, has filed a valid selection application with the United States under 43 U.S.C. 1601 - 1641, as amended, if the selection of the corporation or group has not been rejected or relinquished.

(c) Subsection (b) of this section may not be construed to limit the director in the exercise of authority granted by [AS 38.05.035\(a\)\(11\)](#).

Section I: Mining Rights Administrative Regulations

Title 11: Natural Resources Chapter 86: MINING RIGHTS

Article 1 General Provisions

11 AAC 86.100. Applicability

The provisions of this chapter apply to the acquisition of mineral rights under [AS 38.05.185](#) - 38.05.280.

11 AAC 86.105. Discovery defined

"Discovery" means a finding of valuable mineral as would justify an ordinarily prudent person in expending further time, labor, and money upon the property with a reasonable expectation of developing a paying mine.

11 AAC 86.106. Deferral of rent for annual rental year beginning September 1, 1989 Repealed.

11 AAC 86.107. Payments and refunds

(a) All payments required under this chapter, except for production royalty payments described in [11 AAC 86.769](#), may be made either by mail or in person as provided in this section.

(b) The proper office for payment made by mail is the financial office of the department. However, on or after June 1, 2002, the rental for a new mining claim, leasehold location, or prospecting site location, other than a converted MTRSC location established under [11 AAC 86.250](#), may be mailed to the applicable recording district office, if accompanied by the certificate of location to be recorded and by a completed rental payment worksheet provided by the department.

(c) The proper office for payment made in person is either the Anchorage or Fairbanks office of the department. However, on or after June 1, 2002, the rental for a new mining claim, leasehold location, or prospecting site location, other than a converted MTRSC location established under [11 AAC 86.250](#), may be paid at the applicable recording district office, if accompanied by the certificate of location to be recorded and by a completed rental payment worksheet provided by the department.

(d) If a rental payment is received in an amount in excess of that due for a location, the department will credit the excess amount to rent that might become due for that location, unless a refund is requested. The department will refund the excess amount only if it receives a written request for the refund within 90 days after the date of payment.

(e) A rental payment received for a closed location does not convey mineral rights to that location. The department will refund a payment received for a closed location if it receives a written request for a refund within 90 days after the date of the payment.

(f) The department may not refund a rental payment except as provided in (d) and (e) of this section.

(g) The department may not make a refund of a cash payment of annual labor.

11 AAC 86.108. Notices

(a) Any decision or deficiency notice given to a locator under the provisions of this chapter will be made in writing

and delivered in person or mailed by certified mail, return receipt requested, to the address of the current owner of the location as shown on the records of the division of mining. Other notices and letters from the department will be delivered in person or sent by first class mail or certified mail to the locator's current address of record.

(b) For purposes of this chapter, the department will consider delivery by certified mail to occur when the receipt is signed. If the addressee neglects or refuses to sign for certified mail, the department will consider delivery to occur when the notice is deposited in a United States post office addressed to the person's current address of record with the department.

(c) A locator must inform the department of the locator's most recent, or permanent, mailing address. The department will make changes to a locator's address of record upon receipt of a written request by the locator.

11 AAC 86.110. Existing mining claims, federal leases and permits

Nothing in [11 AAC 86](#) and [11 AAC 88](#) adversely affects the continued validity of any lease, permit, license, location, or contract, or any rights arising thereunder, granted or issued by the United States, or any rights acquired or being exercised pursuant to the mining laws of the United States, before the land was acquired by the State of Alaska.

11 AAC 86.115. Locations on state-selected land

(a) A location made on state-selected land that has not been conveyed to the state by the federal government through tentative approval or patent is made at the locator's risk. Because the state does not have management authority over the land unless the selection has been conveyed and cannot authorize exploration work or mining until that time, the locator is responsible for obtaining any necessary permits from the federal land manager and other permitting authorities.

(b) A location made on state-selected land in accordance with this chapter creates prior rights against subsequent locators and becomes a mining claim, leasehold location, or prospecting site when the federal government conveys the selection to the state through tentative approval or patent, whichever occurs first, unless the conveyance restricts or bars the location, or unless a state mineral closure is in effect on the date of the conveyance. If a state leasing restriction is in effect on the date of the conveyance, a location made before the conveyance is subject to that restriction. If the land is closed to mineral entry or restricted to leasing after the date of the conveyance, a valid location that was made before the conveyance is unaffected.

(c) If only a portion of the area of a mining location on state-selected land is conveyed to the state, only the portion of the mining location that is on the land conveyed becomes a mining claim, leasehold location, or prospecting site. The portion of the area of the location on the state-selected land that is not conveyed continues as a mining location on state-selected land without further action by the locator.

(d) The provisions of [AS 38.05.210](#) - 38.05.240 do not apply to locations made on state-selected land until the state receives the conveyance of the selection from the federal government. The first labor year for a mining claim or a leasehold location made on state-selected land begins at noon on the first September 1 after the date the federal government conveys the selection. For the purpose of determining the amount of annual rent, a location on state-

selected land is considered to have been first located on the date the federal government conveys the selection through tentative approval or patent, whichever occurs first.

(e) The first annual rental year for a location made on state-selected land begins on the date of conveyance of the selection to the state by the federal government and ends at noon on the following September 1. The first annual rental payment is due on the date of conveyance and must be paid within 90 days after that date. It is the locator's responsibility to determine the date of conveyance. In accordance with [11 AAC 86.107](#) and [11 AAC 86.215](#)(f), the locator may make a one-time, non-refundable deposit of \$25 for each location made on state-selected land. If the state receives conveyance to the selection, the department will credit the deposit to the first rental payment that becomes due for the location. In the event the rental deposit amount should ever change, the previous one-time nonrefundable deposit amount does not have to be adjusted so the amount is the same as the new rental deposit amount. A location made on state-selected land that is conveyed to the state by the federal government constitutes an abandonment of the location under [AS 38.05.265](#) if the department has not received the rental payment or rental deposit for the location within 90 days after conveyance of the selection.

11 AAC 86.120. Conditional mining leases and locations Repealed 5/18/90.

11 AAC 86.125. Failure to comply

(a) The failure on the part of a mining lessee or locator to comply strictly with the provisions of this chapter and the applicable statutes does not invalidate the mining lessee's or locator's rights if it appears to the satisfaction of the director that the locator or lessee complied as nearly as possible under the circumstances and that conflicting rights are not asserted by another person. Upon written application, the director may issue a certificate of substantial compliance that sets out the specific failure on the part of the lessee or locator and the relief granted. The certificate does not cure any defect not specifically referred to in the certificate. The certificate becomes effective when recorded in the recording district where the located or leased land is located.

(b) An application for a certificate of substantial compliance must include the name and address of the mining lessee or locator, the name of the location or lease, any serial number assigned by the department to the location or lease, an application fee as set out in [11 AAC 05.010](#)(a)(9)(G), a statement of the specific failure to comply the reasons for the failure, and any other information the director considers necessary to determine the circumstances of the case.

11 AAC 86.130. Filing and recording Repealed 12/31/82.

11 AAC 86.135. Mineral deposits open to location

(a) Rights in and to deposits of locatable minerals, except on tide and submerged land as specified in (c) of this section, may be acquired by making a mineral location in conformance with [AS 38.05.185](#) - 38.05.275 and [11 AAC 86](#), unless the deposits are in or on state land that is closed to location. To constitute a valid location, both discovery and posting of the location notice must occur during a time when the land is open to location.

(b) This section constitutes the commissioner's finding, in accordance with [AS 38.05.185](#)(a), that selling or leasing of land, or conveying land under [AS 29.65.010](#) - 29.65.140 or [AS 38.05.810](#), other than a locatable mineral interest, with the mineral rights reserved to the state, creates potential use conflicts requiring that mining be allowed only under written leases. If the land remains open to location, a location made on that land after the sale, lease, or conveyance is a leasehold location.

(c) Rights in and to deposits of locatable minerals on tide and submerged land may be acquired only under the provisions of [AS 38.05.250](#) and [11 AAC 86.500](#) - [11 AAC 86.570](#), except that tide and submerged land may be included in a location under [AS 38.05.195](#) if two corners are on or above the line of mean high tide.

(d) If the land upon which a location is made is restricted to mining under lease before the discovery date or the date the location notice was posted, the locator has prior rights only to a leasehold location under [AS 38.05.205](#).

(e) Notice will be given under [AS 38.05.945](#) before an order closing land to mining or mineral location or restricting it to mining under lease is issued, amended, or revoked.

11 AAC 86.140. Drawing of prior existing locations

The requirement under [11 AAC 86.210](#)(4), [11 AAC 86.215](#)(a)(6), [11 AAC 86.410](#)(a)(4), and [11 AAC 86.410](#)(b)(6) that a locator show the relationship of his location to adjacent and contiguous mining claims, leasehold locations, and prospecting sites held by other parties is for informational purposes only. It is not an admission by the locator of the proper location and maintenance, good standing, or validity of those other claims, locations, or sites.

11 AAC 86.145. Surface use

(a) The following provisions apply to land for which the state owns the surface:

(1) A locator does not have exclusive use of the surface of the location. A locator may use the surface of the location only to the extent necessary for the prospecting for, extraction of, or basic processing of mineral deposits. A locator may not restrict public access to or other uses of the surface unless approved in writing by the director. The director may allow the locator to restrict public access or other surface uses of the location only to protect public safety or prevent unreasonable interference with the rights of the locator.

(2) The building, placing, or use of surface structures or other surface improvements, including airstrips and roads, within the boundaries of a mining property must be approved by the director in writing through a plan of operations, land use permit, or other written authorization. The director will only approve surface structures or other surface improvements that are necessary to carry out authorized operations. Factors to be used by the director in approving the surface structures, other surface improvements, or uses include: access to the property, remoteness of location, security of the operations, planned level of operations, existing authorized surface uses, and the current level of activity.

(3) A classification or designation indicating that timber and other forest products of significant value are included within a mining property is prima facie evidence that the land on which the property is located is considered to be "timberlands" for purposes of [AS](#)

8.05.255. The division of forestry must be contacted before using or clearing timber from timberlands.

(4) The director may require documentary evidence of mining activity to support a request for surface use. Failure to provide documentary evidence when required by the director is grounds for denial of the requested surface use. At the request of a person making a request for surface use, the department will keep confidential the cost data and financial information submitted by the person, but the person must clearly identify the cost data and financial information and separate it from information not qualifying under AS 38.05.035(a)(9) for confidential treatment.

(b) If the surface estate or interests in the surface estate are owned by a third party with the minerals reserved to the state under AS 38.05.125, the locator must make provisions under AS 38.05.130 to pay the owner of the surface estate or surface interests for any damage that may be caused by the use or development of that location. If the locator and the owner of the surface estate or interests are unable to reach agreement concerning the provision for payment of damages, the locator may enter the land in the exercise of the locator's right to use or develop the minerals reserved under AS 38.05.125 after a determination by the director that the proposed activities are necessary for the locator to exercise the rights reserved under AS 38.05.125, and after posting a surety bond determined by the director under AS 38.05.130. A locator who wishes to enter the land in this manner shall provide information requested by the director so that the director may make each of the determinations required by this subsection. The locator shall also comply with requirements for a reclamation plan and bond under AS 27.19.010 - 27.19.100 and 11 AAC 97.010 - 11 AAC 97.640.

11 AAC 86.150. Plan of operations instead of land use permit

A person intending to conduct mineral exploration or development activities that would require a land use permit under 11 AAC 96 may file a plan of operations for approval instead of applying for a land use permit. The plan of operations must meet the requirements of 11 AAC 86.800.

11 AAC 86.155. Sale, lease, or other transfer

(a) The rights held under a mining location on state land, or any interest in an undivided location, may be sold, leased, or otherwise transferred without the approval of the director. The sale, lease, or other transfer document must be recorded in the district recorder's office for the recording district in which each transferred mining location is located, and the transfer document must include:

- (1) for a sale, lease, or transfer that is made on or after 8/26/98, the word "mining" in the title of the document;
- (2) the claim name of each location;
- (3) the ADL number (if assigned) for each location;
- (4) every section, township, range, and meridian in which each transferred mining location is located;
- (5) the current mailing address of each party to the transfer; the department will change the owner of record for a mining location on its records if a transfer document containing the information above is recorded.

(b) The failure to comply with the provisions of (a) of this section does not affect the validity or enforceability of the sale, lease, or transfer of a right or interest described in (a)

of this section between the parties to the sale, lease, or transfer.

(c) Before a portion of a mining location may be sold or granted, the original location must be physically divided by amending it to reduce its size. A new location must be created on the remaining ground in accordance with this chapter. The original discovery and location dates apply only to the amended location and not to the newly created location. Any sale or grant of rights under either the amended location or the new location must comply with (a) of this section.

Article 2

Staking, Recording and Maintaining Claims and Leasehold Locations

11 AAC 86.200. Discovery required

No mining claim or leasehold location is complete until after the discovery, as defined in 11 AAC 86.105, of locatable minerals within the limits of the location.

11 AAC 86.202. MTRSC and traditional mining claims and leasehold locations

(a) An **MTRSC claim** is a claim located as provided in AS 38.05.195(b)(1) and this chapter. An MTRSC leasehold location is a leasehold location located as provided in AS 38.05.195(b)(1), AS 38.05.205, and this chapter.

(b) A **traditional mining claim** is a claim located as provided in AS 38.05.195(b)(2) and this chapter, and means the same as a non-MTRSC location, as that term is used in AS 38.05.195(b)(2). A traditional leasehold location is a leasehold location located as provided in AS 38.05.195(b)(2), AS 38.05.205, and this chapter.

(c) A **traditional location** is a traditional mining claim or a traditional leasehold location.

11 AAC 86.205. Marking locations

The locator of a mining claim or leasehold location shall designate the location by erecting at each corner of the location substantial monuments of stone or setting posts, not less than three feet in height, not less than two and one-half inches in diameter, and hewn and marked with the name of the location and the number of the monument, beginning with number 1 at the northeast corner and proceeding in a clockwise direction around the location. Where it is impracticable to place a monument in its true position, a witness monument must be erected and marked so as to indicate the true position of the corner. Where locations under common ownership have common corners, a common corner monument may be used.

11 AAC 86.210. Attaching location notice

The locator of a mining claim or leasehold location shall personally, or through an agent, attach or post a notice on the monument at the northeast corner of the location. The notice may be in any form, including as a metal tag. The notice must include

- (1) the name or number of the mining claim or leasehold location;
- (2) the date of posting the notice of location;
- (3) if the mining claim or leasehold location is (A) a traditional location, the length and width of the mining claim or leasehold location in feet; or

- (B) an MTRSC location, the meridian, township, range, section, and quarter- or quarter-quarter-section of the mining claim or leasehold location;
- (4) a sketch depicting, to the best of the locator's knowledge, the relationship of the mining claim or leasehold location to adjoining and contiguous mining claims, leasehold locations, and prospecting sites; and
- (5) the name and current mailing address of each locator.

11 AAC 86.215. Certificate of location and first rental payment

(a) Within 45 days after the date of posting of the notice of location, a locator shall record a certificate of location in conformance with [AS 38.05.195](#). The certificate of location must be recorded in the recording district in which the location is situated, on a form approved by the department or on a substantially similar form meeting the recording requirements of [11 AAC 06.040](#), and must include

- (1) the name or number of the location;
- (2) the date of the locator's discovery and the date of posting of the notice of location;
- (3) for a traditional location, the length and width of the location in feet, and each meridian, township, range, section, quarter-section, and quarter-quarter section in which the location is situated;
- (4) for an MTRSC location, the meridian, township, range, section, quarter-section, and if applicable the quarter-quarter-section of the location;
- (5) the name and current mailing address of each locator, and the signature of each locator or of the locator's agent;
- (6) the name of the recording district in which the location is situated; and
- (7) a map at an indicated scale of 1:63,360 (one inch = one mile) or a more detailed scale that shows the boundaries of the claim or leasehold location, the dominant physical features of the land, the protracted or surveyed section lines surrounding the location, and, to the best of the locator's knowledge, the relationship of the location to adjacent or contiguous mining claims, leasehold locations, mining leases, and prospecting sites; if more than one contiguous location is being recorded simultaneously, a single map showing all locations may be attached to one of the certificates of location if the document to which the map is attached is cross-referenced on each certificate of location.

(b) Failure to file for record a certificate of location within the time specified in (a) of this section, constitutes an abandonment of the claim or leasehold location.

(c) Repealed 5/30/85.

(d) Repealed 5/30/85.

(e) Repealed 5/30/85.

(f) The first annual rental payment for a new location on state land is due within 45 days after the date of posting of the notice of location. The first annual rental payment for a location on state-selected land is due on the date the federal government conveys all or a portion of the land within the location to the state, must be paid within 90 days after that date, and must be paid as provided in [11 AAC 86.107](#). A rental payment for a new location must be submitted as provided in [11 AAC 86.107](#) and must be accompanied by a copy of the certificate of location, whether or not it has been recorded. The first rental payment for a location on state land will be considered as rent for the period from the date of posting to noon of the

following September 1. Before the date of conveyance, a locator may submit a payment and certificate of location for a location on state-selected land. As provided in [11 AAC 86.115](#), the payment will be considered a non-refundable deposit credited to the first rental payment if the selection is conveyed to the state.

11 AAC 86.220. Annual labor

(a) Except as provided in [11 AAC 86.115](#), the first labor year begins at noon on the first September 1 following the date a location notice is posted under [11 AAC 86.210](#). Each subsequent annual labor year begins at noon on September 1. A location that is located on September 1 will be considered to have been located after noon on that day.

(b) Work performed outside the boundaries of the location must develop or benefit the location to qualify as annual labor. Transportation or workers or equipment to or from the location does not qualify as annual labor. Drilling or excavating, including ore extraction, or geological, geochemical, geophysical, or airborne surveys, as provided for in [AS 38.05.240](#), may qualify as annual labor.

(c) During each labor year in which the performance of annual labor is required, or within 90 days after the close of that annual labor year, the owner of each mining claim, leasehold location, or mining lease on state land or some other person having knowledge of the facts, shall make and file for record an affidavit. The affidavit must describe the performance of the labor or the making of improvements for the immediately preceding year and any cash payment made instead of performing labor. The affidavit must describe any labor in excess of that required for the preceding year that is to be applied to later years, and that excess labor may be applied to any or all of the next four consecutive labor years. The affidavit must contain the following essential facts:

- (1) the name or number of the mining claim, leasehold location, or mining lease;
- (2) every meridian, township, range, and section in which the location or locations are situated, and the recording district in which it is located;
- (3) the name and current mailing address of each owner;
- (4) the dates of performance of the labor and the character and value of the improvements made or labor performed, or the amount of cash payment made instead of annual labor; and
- (5) the value of excess work to be applied from previous years.

(d) An affidavit required by this section may be made before any officer authorized to administer oaths, or, when no official empowered to administer oaths is available, in the manner provided by [AS 09.63.020](#).

(e) Repealed 5/30/85.

(f) Repealed 5/30/85.

(g) An affidavit of annual labor may be amended under [AS 38.05.210\(c\)](#). However, an affidavit that does not set out the essential facts is void under [AS 38.05.265](#) and may not be amended.

(h) A cash payment made instead of performing annual labor must be received by the department as provided in [11 AAC 86.107](#) and must be received by the department on or before September 1st of each year. The payment must be accompanied by a copy of the affidavit of annual labor or a statement containing the name and ADL number for the mining claim, leasehold location, or mining lease for which the payment is made. If cash payment is asserted in an

affidavit of annual labor but is not paid by the end of the labor year, the mining claim or leasehold location will be considered abandoned under [AS 38.05.265](#). A person may not make a cash payment instead of annual labor for more than five consecutive years at a time. A locator who makes a cash payment in lieu of annual labor for one or more years must also record an affidavit of annual labor under [AS 38.05.210](#) and (c) of this section for each year for which a cash payment is made.

11 AAC 86.221. Annual rental

(a) A rental payment for a mining claim or leasehold location must be made in accordance with [11 AAC 86.107](#). The first rental payment for a new location must be made in accordance with [11 AAC 86.215](#)(f). Each subsequent payment must be accompanied by a rental form provided by the department, a photocopy of that form, or a rental form approved by the director. The rental form must contain the name and address of the owner of record and the name and ADL number of the claim or leasehold location. The department will, in its discretion, refuse to accept a payment submitted without the required information.

(b) Except as provided in (f) of this section, the amount of the annual rental payment is based on the number of years since a mining claim or leasehold location was first located, as follows: Number of Rental Amount for Rental Amount Rental Amount Years Since Each Quarter- for Each for Each First Section Size Quarter- Traditional Located MTRSC Quarter- Mining Claim Location Section Size or Leasehold MTRSC Location Location 0-5 \$140 \$ 35 \$ 35 6-10 \$280 \$ 70 \$ 70 11 or more \$680 \$170 \$170

(c) For purposes of determining the amount of annual rental, a claim or leasehold location located on state land on or before August 31, 1989, is considered to have been first located on August 31, 1989, and the first rental year for such a claim or leasehold location is considered to have begun at noon on September 1, 1989. The first rental year for a claim or leasehold location located on or after September 1, 1989, begins on the date of posting location and ends at noon on the following September 1. The first rental year for a claim or leasehold location located on state-selected land begins on the date the federal government conveys the land to the state and ends at noon on the following September 1. A claim or leasehold location located on any September 1 will be considered to have been located after noon on that day.

(d) The rental payment for each subsequent rental year is due on September 1 and must be paid on or before November 30.

(e) If a locator fails to make a timely rental payment, the claim or leasehold location will be considered abandoned under [AS 38.05.265](#). If a rental payment is timely submitted to the department, but the director determines that the payment is less than the amount due, the locator will be granted 30 days after a deficiency notice is delivered under [11 AAC 86.108](#) to submit the additional rental due. In the deficiency notice, the department will advise the locator that if full payment is not received within the 30-day period, the deficient payment will be applied until exhausted to the claims and leasehold locations with the lowest ADL numbers. The claims and leasehold locations with the remaining ADL numbers for which rent was due and full payment not received will be considered abandoned without further notice.

(f) The following additional rules apply to a rental determination:

(1) for the rental year following the year in which a new MTRSC location is established, the new MTRSC location is entitled to a 50 percent reduction in the rental that would otherwise be due based on the size of the new MTRSC location;

(2) for the rental year following the year in which a traditional location is converted to an MTRSC location, the converted MTRSC location is entitled to a 50 percent reduction in the rental that would otherwise be due based on the size and rental age of the converted MTRSC location as determined under [11 AAC 86.260](#);

(3) if a traditional location is converted into an MTRSC location, the annual rental for the converted MTRSC location is based on its size and its rental age as determined under [11 AAC 86.260](#);

(4) the annual rental for a location established by a locator or a locator's successor in interest under the circumstances described in [11 AAC 86.223](#)(c) or (d) is based on the location's size and on the number of years since the relinquished or existing location was first located.

11 AAC 86.223. Abandonment, relinquishment, and relocation

(a) For purposes of [AS 38.05.265](#) and this section, a "successor in interest" to a locator or claimant means

(1) the spouse, child, sibling, or parent of the locator or claimant;

(2) a person or association described in [AS 38.05.190](#)(a) that owned an interest in the locator's or claimant's location; or

(3) a corporation or association that is described in [AS 38.05.190](#)(a)(5) or [AS 38.05.190](#)(a)(6) that owned an interest in the locator's or claimant's location, but only if a majority of the ownership of the corporation or association is held by a person or association described in (1) or (2) of this subsection.

(b) A locator may not include in a new location any part of a mining claim or leasehold location abandoned under [AS 38.05.265](#) less than a year ago by that locator or by a person to whom the locator is a successor in interest, regardless of whether the abandoned location was an MTRSC or a traditional location.

(c) The posting date for a relinquished MTRSC or traditional location will be used as the date for determining the rental owed under [11 AAC 86.221](#)(b) for a new traditional location, a new MTRSC location, or a traditional location that is converted to an MTRSC location under [11 AAC 86.250](#) - [11 AAC 86.255](#) if

(1) the relinquished location is relinquished under circumstances not constituting abandonment under [AS 38.05.265](#);

(2) within a year after relinquishing the relinquished location, its former owner or a successor in interest posts the new traditional location, the new MTRSC location, or the converted MTRSC location; and

(3) the new traditional location, the new MTRSC location, or the converted MTRSC location includes any part of the relinquished location.

(d) If a locator posts an MTRSC location over an existing location, and is the locator or a successor in interest to the locator of the existing location, the new location will be

considered to be a converted MTRSC location that is subject to [11 AAC 86.250](#).

11 AAC 86.225. Service of notice on co-owners

The service of written personal notice authorized by [AS 38.05.215](#) shall be made by certified mail only.

11 AAC 86.230. Recordation of sale, lease, or other transfer Repealed 5/30/85.

Article 3
Converted MTRSC Locations

11 AAC 86.250. General principles for conversion of a traditional location to a converted MTRSC location One

or more traditional mining claims or leasehold locations may be amended at any time to establish one or more converted MTRSC locations. The following rules apply to a conversion:

- (1) all or part of a traditional location may be included in the converted MTRSC location; each converted MTRSC location must be supported by a discovery somewhere within its boundaries;
- (2) if only part of a traditional location is included in the converted MTRSC location, the remaining part may be either relinquished or relocated as an amended location;
- (3) a converted MTRSC location does not establish locatable mineral rights to an area outside the traditional location if that area is not open to location;
- (4) conversion of a traditional location to a converted MTRSC location is not complete unless the annual rental due on the traditional location for the year in which the conversion occurs is timely paid in full; the failure to timely pay the required rental on the traditional location results in abandonment of both the converted MTRSC location and traditional locations under [AS 38.05.265](#).

11 AAC 86.255. Certificate of location for a converted MTRSC location

In addition to marking the location as required by [11 AAC 86.205](#) and attaching a notice of location as required by [11 AAC 86.210](#), a locator establishing a converted MTRSC location must record a certificate of location within 45 days after posting the converted MTRSC location. The certificate of location must be recorded in the recording district in which the converted MTRSC location is situated, on a current form approved by the department for conversions or on a substantially similar form meeting the recording requirements of [11 AAC 06.040](#), and must include

- (1) the location name or number of the converted MTRSC location, and the meridian, township, range, section, and quarter- or quarter-quarter-section of the location;
- (2) for each traditional location being converted to the MTRSC location, the ADL number, if assigned, location name, discovery date, posting date, and
 - (A) original book and page of recording; or
 - (B) recording office serial number;
- (3) the name of the recording district in which the converted MTRSC location is situated;
- (4) the name and current mailing address of each locator, and the signature of each locator or of the locator's agent;
- (5) a map at an indicated scale of 1:63,360 (one inch = one mile) or a more detailed scale that shows the boundaries of the converted MTRSC location and each

existing location being converted, the dominant physical features of the land, the protracted or surveyed section lines surrounding the converted MTRSC and existing locations, and, to the best of the locator's knowledge, the relationship of the locations to adjacent or contiguous mining claims, leasehold locations, mining leases, and prospecting sites; if the converted MTRSC location is being recorded simultaneously with one or more contiguous converted MTRSC or new locations, a single map showing all locations may be attached to one of the certificates of location if the document to which the map is attached is cross-referenced on each certificate of location; and

(6) proof of ownership transfer, if the locator of the converted location is not the owner of record of each existing location being converted; that proof must be filed with the certificate of location.

11 AAC 86.260. Rental age of a converted location

For purposes of establishing the annual rental owed under [11 AAC 86.221](#), the rental age of a converted MTRSC location is the number of years since the first posting of the traditional location from which the MTRSC location was converted. If more than one existing traditional location is used to establish a converted MTRSC location, the rental age of the converted location is the average of the rental ages of the existing traditional locations, then rounded to the nearest whole year. For purposes of calculating that average,

- (1) if a converted quarter-section MTRSC location includes fewer than four existing traditional locations, the department will count each existing location's rental age as only 25 percent of the average; additional imaginary locations, each assumed to be one year old and each counting as 25 percent, will be added to the average to reach 100 percent; the average age will then be rounded to the nearest whole year; and
- (2) the rental age of a relinquished location, as determined by that location's posting date, will be included in calculating a converted MTRSC location's rental age if the converted MTRSC location
 - (A) includes any part of the relinquished location;
 - (B) is established less than a year after the relinquishment; and
 - (C) is established by the locator of the relinquished location or by that locator's successor in interest under [11 AAC 86.223](#).

11 AAC 86.265. Credit or deficiency in payment of rental on a converted location

(a) The annual rental paid in the year of conversion on an existing location included in whole or in part in a converted MTRSC location will be credited as a timely payment to the first-year rental owed on the converted MTRSC location. If parts of the existing location are included in more than one converted MTRSC location, the department will allocate the rental payment equally to the first-year rental owed on each converted MTRSC location. If a deficiency exists, the department will mail a deficiency notice to the locator as provided in [11 AAC 86.221\(e\)](#) to permit payment of the balance owed. If an excess exists, it will be credited to rent owed for the converted MTRSC location in the second and subsequent rental years until exhausted. If a deficiency is not cured in accordance with notice from the department, the

(1) converted location will be considered abandoned under [AS 38.05.265](#); and

(2) department will consider the traditional location from which the abandoned location was converted to continue in force and be subject to this chapter as if the conversion had not occurred.

(b) The annual rental owed on a converted MTRSC location in the next and subsequent rental years following the year of conversion is due and payable in accordance with [11 AAC 86.221](#). From the rental owed on a converted MTRSC location in the rental year following the year of conversion, the department will deduct the 50 percent discount described in [11 AAC 86.221\(f\)\(2\)](#), together with any credit for overpayment of first-year rental. The overpayment credit, if any, and the 50 percent rental discount are considered timely partial payment toward the second-year rental.

11 AAC 86.270. Labor obligation on a converted location

The labor obligation required to be met in the year that an existing location is included in a converted MTRSC location must still be satisfied and is subject to [AS 38.05.265](#) as if a conversion had not occurred.

11 AAC 86.290. Definitions In [11 AAC 86.250](#) - [11 AAC 86.290](#),

unless the context requires otherwise,

(1) "**conversion**" means the amendment of one or more traditional mining claims or traditional leasehold locations to establish an MTRSC location;

(2) "**converted MTRSC location**" means an MTRSC location established by means of a conversion.

Article 4

Upland Mining Leases 11 AAC 86.300 - .350 **(See Section III: Mining Leases)**

Article 5

Prospecting Sites

11 AAC 86.400. Purpose and rights acquired

(a) A prospecting site may be located at the option of the prospector and nothing in this chapter requires that a prospecting site location must be made before any prospecting work may be done on state land.

(b) The holder of a prospecting site on state land has the exclusive right, subject to any prior rights, to use the surface within the boundaries of the location for performing work acceptable as prospecting work under [11 AAC 86.425](#) and also has the exclusive right to stake mining claims or leasehold locations within the boundaries of the prospecting site. The exclusive right begins when the corners and boundaries are marked and the location notice posted as required in [11 AAC 86.405](#) and [11 AAC 86.410](#) and terminates as provided in [11 AAC 86.420](#).

11 AAC 86.405. Boundaries and corners

Boundaries and corners of a prospecting site must be marked in accordance with [11 AAC 86.205](#).

11 AAC 86.410. Prospecting site location notice and certificate of location

(a) On a monument at the northeast corner of the prospecting site location, the locator shall attach or post a notice. The notice may be in any form, including as a metal tag. The notice must include

- (1) the name or number of the prospecting site location;
- (2) the date of posting the notice of location;
- (3) the meridian, township, range, section, and quarter-section of the prospecting site location;
- (4) a sketch depicting, to the best of the locator's knowledge, the relationship of the prospecting site to adjacent and contiguous prospecting sites, mining claims, and leasehold locations;
- (5) the name and current mailing address of each locator; and
- (6) the recording district in which the prospecting site is located.

(b) The holder of a prospecting site location shall, within 45 days after the date of posting the location notice, record a certificate of location in the recording district in which the location is situated using a form approved by the department, or a substantially similar form meeting the recording requirements of [11 AAC 06.040](#). The certificate of location must include

- (1) the name or number of the prospecting site location;
- (2) the date of posting the notice of location;
- (3) the meridian, township, range, section, and quarter-section of the prospecting site location;
- (4) the name and current mailing address of each locator, and the signature of each locator or of the locator's agent;
- (5) the name of the recording district in which the prospecting site is located; and
- (6) a map at an indicated scale of 1:63,360 (one inch = one mile) or a more detailed scale that shows the boundaries of the prospecting site, the dominant physical features of the land, the protracted or surveyed section lines surrounding the prospecting site, and, to the best of the locator's knowledge, the relationship of the prospecting site to adjacent and contiguous mining claims, leasehold locations, and prospecting sites;
- (7) repealed 1/19/2002.

(c) Failure to record a certificate of location within 45 days, as provided in (b) of this section, constitutes abandonment under [AS 38.05.265](#) of all rights in the prospecting site location.

(d) Repealed 5/30/85. (e) Repealed 5/30/85. (f) Repealed 5/30/85.

11 AAC 86.415. Recordation of sale, lease, or other transfer Repealed 5/30/85.

11 AAC 86.420. Duration Repealed 5/30/85.

11 AAC 86.422. Term and rental

(a) The provisions of [AS 38.05.245\(c\)](#) set the term of a prospecting site located on or after August 20, 2000. Expenditures for prospecting work on a prospecting site location may not be credited toward expenditures for annual labor for a mining claim or leasehold location.

(b) The rental required for a prospecting site is set out in [AS 38.05.211\(a\)](#) and must be paid in accordance with [11 AAC](#)

86.107. The rental for a prospecting site located on state land is due within the time provided by AS 38.05.245

(c) The rental for a prospecting site located on state-selected land is due on the date the federal government conveys all or a portion of the land within the location to the state, and must be paid within 90 days after that date. Before the date of conveyance, a locator of a prospecting site on state-selected land may submit a \$255 payment with the certificate of location, as provided in 11 AAC 86.107. The payment will be considered a non-refundable deposit credited to the required rental payment if the selection is conveyed to the state.

11 AAC 86.425. Prospecting work

(a) During each year of the term of a prospecting site, acceptable work amounting to at least \$5 per acre for the area enclosed within the prospecting site location must be performed.

(b) The only prospecting work acceptable for holding prospecting sites is

- (1) drilling or excavating; or
- (2) geological, geophysical, or geochemical work by persons qualified to do the work.

11 AAC 86.430. Prospecting sites located before August 20, 2000

(a) A prospecting site located before August 20, 2000 may be extended once for a period of one year beyond the original expiration date by recording a notice of extension, in the recording district where the prospecting site is located, during the 90-day period before the prospecting site expires.

(b) The notice of extension for a prospecting site located before August 20, 2000 must meet the recording requirements of 11 AAC 06.040 and must

- (1) contain the name and current mailing address of the locator;
- (2) contain the name and ADL number of the prospecting site being extended, and the
 - (A) book and page number of the site's original recorded certificate of location; or
 - (B) serial number of the site's original recorded certificate of location;
- (3) state why an extension is needed;
- (4) be signed by the locator or the locator's agent; and
- (5) indicate each meridian, township, range, section, and quarter-section in which the prospecting site is situated and the recording district in which the site is located.

(c) A locator of a prospecting site located before August 20, 2000 may request further one-year extensions by submitting a written request to the director no later than 90 days before the expiration of the prospecting site. The request for extension must contain the information required under (b) of this section. The director may request that additional information be supplied to support the request for extension. The director will grant further extensions only under unusual circumstances.

(d) If a further extension is granted by the director, the prospecting site locator shall, no later than 90 days after delivery of the notice of extension, record the notice in the recording district in which the site is located.

(e) The amount of work required during the first year of extension of the prospecting site is \$5 per acre. During each subsequent year of extension, the required work is \$10 per acre.

(f) If a prospecting site has been located before August 20, 2000 on state-selected land, and conveyance to the state occurs on or after that date, the rights, responsibilities, and conditions for acquisition and maintenance of the prospecting site are those applicable to sites located on and after August 20, 2000, as provided in AS 38.05.245, AS 38.05.265, and 11 AAC 86.422.

11 AAC 86.435. Staking claims on expired sites

The expiration of a prospecting site does not prevent the locator from staking a mining claim or leasehold location in the area formerly covered by the prospecting site location.

Article 6

Offshore Permits and Leases 11 AAC 86.500 – .580 **(See Section III: Mining Leases)**

Article 7

Millsites

11 AAC 86.600. Millsite permit

(a) The director may grant the owner of a mining interest on federal, state, or private land a millsite permit for use of the state's surface estate for a millsite, tailings disposal, or another use necessary for the mineral development. The surface estate subject to the millsite permit must be on or near the owner's mining interest. The director will set the term of the millsite permit for a duration that is appropriate to the permittee's use of the site, and will condition the millsite permit upon payment of fair market rental value for the term of the permit.

(b) This section does not require an owner of a mineral location under AS 38.05.185 - 38.05.275 to obtain a millsite permit for use of the state's surface estate within the boundaries of the location.

Article 8

Mining Production Licenses

11 AAC 86.700. Applications for production licenses

Repealed.

11 AAC 86.705. Application review Repealed.

11 AAC 86.710. Public notice Repealed.

11 AAC 86.715. Review after public notice Repealed.

11 AAC 86.720. Commissioner's determination to adjudicate Repealed.

11 AAC 86.725. Adjudication by commissioner Repealed.

11 AAC 86.730. No adjudication by commissioner Repealed.

11 AAC 86.735. Interim mining Repealed.

11 AAC 86.740. Transfer of a production license Repealed.

11 AAC 86.745. Expiration of a production license Repealed.

11 AAC 86.750. Definitions Repealed.

Article 9

Mining Production Royalty 11 AAC 86.760 - .796 **(See Section VI: Production Royalty and Mining License Tax)**

Article 10

General Prospecting Permit and Lease Provisions **11 AAC 86.800 – .815** **(Includes Plan of Operations and Bonding)** **(See Section III: Mining Lease)**

Section II: Mining Statute

Title 27. Mining

Chapter 27.05 ADMINISTRATION AND SERVICES

Article 1. Department of Natural Resources

Sec. 27.05.010. Department responsible for mineral resources.

(a) The department has charge of all matters affecting exploration, development, and mining of the mineral resources of the state, the collection and dissemination of all official information relative to the mineral resources, and mines and mining projects of the state, and the administration of the laws with respect to all kinds of mining.

(b) The department is the lead agency for all matters relating to the exploration, development, and management of mining, and, in its capacity as lead agency, shall coordinate all regulatory matters concerning mineral resource exploration, development, mining, and associated activities. Before a state agency takes action that may directly or indirectly affect the exploration, development, or management of mineral resources, the agency shall consult with and draw upon the mining expertise of the department.

Sec. 27.05.020. Conflict of interest prohibited.

In conducting the inquiries and investigations authorized by [AS 27.05.010](#) - 27.05.070, no officer or employee of the department may have a personal or private interest in a mine or the products of a mine under investigation or accept employment from a private party for services in the examination of private mineral property. Nothing in this section prevents employment by the department, in a consulting capacity or in the investigation of special subjects, of an engineer or other expert whose principal professional practice is not employment by the department.

Sec. 27.05.030. Cooperation with federal departments.

The department shall cooperate with the heads of executive departments of the United States in making investigations and in disseminating information to stimulate mining, quarrying, and metallurgical industries in the state, and in providing for the inspection of mines and protection of lives of miners.

Sec. 27.05.040. Negotiations with federal departments and other agencies.

The department may negotiate with the federal departments and other agencies for arrangements that it considers expedient for cooperation with those departments and agencies in formulating and carrying out policies and projects designed to encourage and assist in the development of the mineral resources of the state.

Sec. 27.05.050. Survey of resources and mining operations and dissemination of information.

The department shall conduct a continuing survey of the mineral resources and mining operations of the state and shall disseminate information regarding them to assist prospectors and miners, safeguard the lives and health of miners, protect investors in the mining industry, and foster and promote the best interests of the mining, mineral, and related industries of the state.

Sec. 27.05.060. Annual report.

The department shall make an annual report to the governor on all essential matters with regard to mining in the state. The department shall notify the legislature that the report is available.

Sec. 27.05.070. Assistance to miners and prospectors.

The department shall, so far as practicable, throughout the state assist miners and prospectors by

- (1) giving information as to mineral deposits gained from the minerals survey of the state;
- (2) securing and examining samples and applying tests upon the ground, or in the office or laboratory, and advising as to the nature of a mineral and as to the best methods of analysis, sampling, assay, and test;
- (3) reporting to the governor the location of roads, trails, and bridges as in its opinion are reasonably necessary for the development of mineral resources;
- (4) giving advice, information, and directions as may be of assistance to the miners and prospectors of the state.

Article 2. Assays

Sec. 27.05.080. Public assay offices.

The department shall, for the purpose of aiding bona fide miners and prospectors and stimulating mineral discoveries, establish a public assay office. The department may adopt regulations and establish procedures considered necessary and expedient to carry out this section and [AS 27.05.090](#).

Sec. 27.05.090. Appointment of assayers; information and procedure.

The department shall appoint for each public assay office a competent person to make assays and analyses of Alaskan ores and minerals. No charge shall be imposed for an assay or analysis. When an assay and analysis are made, the person requesting them shall state upon forms furnished by the department:

- (1) the person's permanent residence address;
- (2) a description, as precise as possible, of the location where the sample was taken; and
- (3) other information that the department by regulation may require that may be beneficial to evaluation of the state's mineral resources. Information received and assay results shall be kept confidential for a period of two years. At the end of that period the information and results shall be open to public inspection and may be published by the department.

Please note: No Public Assay Office has been established as of November 2014.

Sec. 27.05.100. - 27.05.130. Unlawful acts; penalties. [Repealed, Sec. 21 ch 166 SLA 1978]. Repealed or Renumbered

Sec. 27.05.140. - 27.05.170. Prospectors' subsidies. [Repealed, Sec. 2 ch 51 SLA 1963]. Repealed or Renumbered

Sec. 27.05.180. - 27.05.210. State equipment for prospectors. [Repealed, Sec. 16 ch 93 SLA 1984]. Repealed or Renumbered

Sec. 27.05.250. Reclamation. [Repealed, Sec. 3 ch 92 SLA 1990. For current law, see [AS 27.19](#)]. Repealed or Renumbered For current law, see [AS 27.19](#).

Chapter 27.07 FINANCIAL ASSISTANCE TO PROSPECTORS [Repealed, Sec. 72 ch 113 SLA 1982].

Chapter 27.08 INTERSTATE MINING COMPACT

Sec. 27.08.010. Compact enacted. The Interstate Mining Compact contained in this section is enacted into law and entered into as follows:

INTERSTATE MINING COMPACT

ARTICLE I. FINDINGS AND PURPOSE

(a) The party states find that

- (1) mining and the contributions thereof to the economy and well-being of every state are of basic significance;
- (2) the effects of mining on the availability of land, water, and other resources for other uses present special problems which properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes, and the public;
- (3) measures for the reduction of the adverse effects of mining on land, water, and other resources may be costly and the devising of means to deal with them are of both public and private concern;
- (4) such variables as soil structure and composition, physiography, climatic conditions, and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaptation, or restoration of mined land, or the development of mineral and other natural resources, but justifiable requirements of law and practice relating to the effects of mining on lands, water, and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated;
- (5) the states are in a position and have the responsibility to assure that mining shall be conducted in accordance with sound conservation principles, and with due regard for local conditions.

(b) The purposes of this compact are to

- (1) advance the protection and restoration of land, water, and other resources affected by mining;
- (2) assist in the reduction or elimination or counteracting of pollution or deterioration of land, water, and air attributable to mining;
- (3) encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated;
- (4) assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for improvement, restoration or protection of such land and other resources;
- (5) assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

ARTICLE II. DEFINITIONS

As used in this compact, the term

- (1) **'mining'** means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location, and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use, but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation of grading when conducted solely in aid of on-site farming or construction;
- (2) **'state'** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or Territory or Possession of the United States.

ARTICLE III. STATE PROGRAMS

Each party state agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish

- (1) the protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations;
- (2) the conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational, or aesthetic value and utility of land and water;
- (3) the institution and maintenance of suitable programs of adaptation, restoration, and rehabilitation of mined lands;
- (4) the prevention, abatement, and control of water, air, and soil pollution resulting from mining - present, past, and future.

ARTICLE IV.: POWERS

In addition to any other powers conferred upon the Interstate Mining Commission, established by Article V of this compact, such commission shall have the power to

- (1) study mining operations, processes, and techniques for the purpose of gaining knowledge concerning the effects of such operations, processes, and techniques on land, soil, water, air, plant, and animal life, recreation, and patterns of community or regional development or change;
- (2) study the conservation, adaptation, improvement, and restoration of land and related resources affected by mining;

- (3) make recommendations concerning any aspect or aspects of law or practice and governmental administration dealing with matters within the purview of this compact;
- (4) gather and disseminate information relating to any of the matters within the purview of this compact;
- (5) cooperate with the federal government and any public or private entities having interests in any subject coming within the purview of this compact;
- (6) consult, upon the request of a party state and within available resources, with the officials of such state in respect to any problem within the purview of this compact;
- (7) study and make recommendations with respect to any practice, process, technique, or course of action that may improve the efficiency of mining or the economic yield from mining operations;
- (8) study and make recommendations relating to the safeguarding of access to resources which are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

ARTICLE V. THE COMMISSION

(a) There is hereby created an agency of the party states to be known as the 'Interstate Mining Commission', hereinafter called 'the commission.' The commission shall be composed of one commissioner from each party state who shall be the governor thereof. Pursuant to the laws of the party state, each governor may have the assistance of an advisory body, including membership from mining industries, conservation interests, and such other public and private interests as may be appropriate, in considering problems relating to mining and in discharging the responsibilities as a commissioner on the commission.

In any instance where a governor is unable to attend a meeting of the commission or perform any other function in connection with the business of the commission, the governor shall designate an alternate who shall represent the governor and act in the governor's place and stead. The designation of an alternate shall be communicated by the governor to the commission in such manner as its bylaws may provide.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission making a recommendation pursuant to Article IV-3, IV-7, and IV-8 or requesting, accepting, or disposing of funds, services, or other property pursuant to this paragraph, Article V(g), V(h), or VII shall be valid unless taken at a meeting at which a majority of the total number of votes on the commission is cast in favor thereof. All other action shall be by a majority of those present and voting; provided that action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, is present. The commission may establish and maintain such facilities as may be necessary for the transaction of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chair, a vice-chair, and a treasurer. The commission shall appoint an executive director and fix the executive director's duties and compensation. Such executive director shall serve at the pleasure of the commission. The executive director, the treasurer, and such other personnel as the commission shall designate shall be bonded. The amount or amounts of such bond or bonds shall be determined by the commission.

(e) Irrespective of the civil service, personnel, or other merit system laws of any of the party states, the executive director, with the approval of the commission, shall appoint, remove, or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain independently or in conjunction with a party state, a suitable retirement system for its employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.

(g) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize, and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph (g) of this Article shall be reported in the annual report of the commission. Such report shall include the nature, amount, and conditions, if any, of the donation, grant, or services borrowed and the identity of the donor or lender.

(i) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(j) The commission annually shall make to the governor, legislature, and advisory body required by Article V(a) of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been made by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE VI. ADVISORY, TECHNICAL, AND REGIONAL COMMITTEES

The commission shall establish such advisory, technical, and regional committees as it may deem necessary, membership on which shall include private persons and public officials, and shall cooperate with the use and services of any such committees

and the organizations which the members represent in furthering any of its activities. Such committees may be formed to consider problems of special interest to any party states, problems dealing with particular commodities of types of mining operations, problems related to reclamation, development, or use of mined land, or any other matters of concern to the commission.

ARTICLE VII. FINANCE

- (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.
- (b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-half in equal shares, and the remainder in proportion to the value of minerals, ores, and other solid matter mined. In determining such values, the commission shall employ such available public source or sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and request for appropriations shall indicate the source or sources used in obtaining information concerning value of minerals, ores, and other solid matter mined.
- (c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article V(h) of this compact provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article V(h) thereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.
- (d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become a part of the annual report of the commission.
- (e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.
- (f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VIII. ENTRY INTO FORCE AND WITHDRAWAL

- (a) This compact shall enter into force when enacted into law by any four or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.
- (b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE IX. EFFECT ON OTHER LAWS

Nothing in this compact shall be construed to limit, repeal, or supersede any other law of any party state.

ARTICLE X. CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

Sec. 27.08.020. Alternate.

The governor may designate the commissioner of natural resources as the governor's alternate to the Interstate Mining Commission.

Sec. 27.08.030. Compact bylaws.

In accordance with art. V(i) of the compact, the Interstate Mining Commission shall file copies of its bylaws and any amendments to the bylaws with the commissioner of natural resources.

Chapter 27.09 MINING LOAN FUND

Please Note: The Mining Loan Fund is no longer active.

Contact the Department of Commerce, Community and Economic Development with questions.

Chapter 27.10 LOCATION AND DEVELOPMENT OF MINING CLAIMS ON FEDERAL PUBLIC DOMAIN

Article 1. Mining Claims on Federal Public Domain Generally

Sec. 27.10.010. Claims to be located as prescribed by law.

A person who discovers upon the public domain in the state a lode or vein of rock in place, or a placer deposit that is open to location under the mining laws of the United States, may locate a lode mining claim or placer mining claim by posting a notice of location and by marking the boundaries as provided in [AS 27.10.030](#) - 27.10.070. An attempted location of a mining claim that does not comply with [AS 27.10.030](#) - 27.10.070 and [AS 27.10.150](#) - 27.10.190 is void.

Sec. 27.10.020. Grubstake contracts to be in writing and recorded.

All contracts commonly known as "grubstaking," except as between the parties making them, are void unless in writing, subscribed by the parties, and recorded with the recorder of the recording district in which the location is made. The contract must contain the names of the parties and the duration of the contract.

Sec. 27.10.030. Manner of designating a lode claim location.

The discoverer of a lode claim shall designate the location as follows:

(1) by posting at the northeast corner of the claim a plain sign or notice containing

(A) the name of the lode claim;

(B) the name of the locator or locators;

(C) the date of the location;

(D) the approximate bearings of corners and angle posts of the claim and the distances between them;

And

(2) by erecting at each corner or angle of the claim substantial monuments of stone or setting posts, not less than three feet in height nor less than three inches in diameter hewn, and marked with the name of the claim, the position or number of the monument, and the direction of the boundary lines and by cutting out, blazing, or marking the boundary lines so that they can be readily traced; where it is impracticable to place a monument in its true position, a witness monument shall be erected and marked to indicate the true position of the corner or angle.

Sec. 27.10.040. Manner of designating a placer claim location.

The discoverer of a placer claim shall designate the location as follows:

(1) by posting on one of the posts or monuments marking the boundaries of the claim a plain sign or notice containing

(A) the name or number of the claim;

(B) the name of the locator or locators;

(C) the date of the location;

(D) the number in feet in length and width claimed; and

(2) by erecting at each corner or angle of the claim substantial monuments or posts not less than three feet in height nor less than three inches in diameter, hewn and marked with the name of the claim, the position or number of the monument, and the direction of the boundary lines and by cutting out, blazing, or marking the boundary lines so that they can be readily traced.

Sec. 27.10.050. Certificate of location to be recorded.

The locator of a lode claim or placer claim shall within 90 days after the date of posting the notice of location on the claim have the claim recorded by recording a certificate of location with the recorder of the recording district in which the claim is located. The certificate of location must contain

(1) the name or number of the claim;

(2) the number of feet in length and width of the claim;

(3) the date of discovering and of posting the notice of location;

(4) the name of the locator or locators;

(5) a description of the claim with such reference to some natural object or permanent monument so that an intelligent person with a knowledge of the prominent natural objects and permanent monuments in the vicinity can identify the claim.

Sec. 27.10.060. Effect of failure to record.

Failure to record the certificate of location within the required 90 days constitutes an abandonment of the claim, and the ground is open to location.

Sec. 27.10.070. Changes in locations and amended notices.

Notices may be amended at any time and monuments changed to correspond with the amended location, but no change may be made that interferes with the rights of others. Whenever monuments are changed or an error is made in the notice or in the certificate of location, an amended certificate of location shall be recorded in the same manner and with the same effect as the original certificate.

Sec. 27.10.080. Water rights where claim includes both banks of a stream. [Repealed, Sec. 2 ch 50 SLA 1966. For current law, see [AS 46.15](#)]. Repealed or Renumbered. For current law, see [AS 46.15](#).

Article 2. Placer Claims on Federal Public Domain

Sec. 27.10.090. Sections applicable to precious-metal placers only.

[AS 27.10.100](#) - 27.10.140 apply only to placer deposits containing gold, silver, or other precious metals or minerals.

Sec. 27.10.100. Limits on size of individual placer claims.

The unit of placer locations in the state is 20 acres, and no single or individual placer mining claim may be located in excess of 20 acres nor have a greater length than 1,320 feet. Where a parcel of placer ground lies between and adjoins two or more validly located claims, the restriction as to length does not apply.

Sec. 27.10.110. , 27.10.120. Limits on size of association claims; location of claims by agent or attorney. [Repealed, Sec. 4 ch 91 SLA 1994]. Repealed or Renumbered

Sec. 27.10.130. Value of labor or improvements required on placer claims.

Upon each placer mining claim located after March 14, 1935, until patent is issued, not less than \$100 worth of labor shall be performed or improvements made during each year for each 20 acres or excess fraction contained in the claim.

Sec. 27.10.140. Location in violation of [AS 27.10.090](#) - 27.10.140 is void.

A placer mining claim attempted to be located in violation of [AS 27.10.090](#) - 27.10.140 is null and void, and the whole area of it may be located by a qualified locator as if no earlier attempt had been made, and no placer mining claim that contains a greater area or is longer than is fixed by law may be patented.

Article 3. Annual Labor or Improvements

Sec. 27.10.150. Annual labor or improvements required.

- (a) During each year beginning at noon on September 1, and until patent is issued, annual labor shall be performed or improvements made on, or for the benefit of or development of, each mining claim in the state to the extent required by the laws of the United States applicable to Alaska.
- (b) If the owner of a mining claim fails to perform the annual labor or make the improvements required by the laws of the United States, the claim is forfeited and open to location by others as if no location of it had ever been made.
- (c) If the general laws of the United States requiring annual labor upon mining claims in Alaska are suspended or waived, administratively or by statute, the laws of the state requiring annual labor under this section upon mining claims are likewise suspended or waived upon the same terms and conditions.

Sec. 27.10.160. Affidavit of labor or improvements.

Within 90 days after September 1 of each year the owner of a mining claim, or some other person having knowledge of the facts, shall make and record with the recorder for the district in which the claim is located an affidavit showing the performance of labor or the making of improvements. The affidavit must contain

- (1) the name or number of the mining claim and where situated;
- (2) the number of days' work done and the character and value of the improvements made;
- (3) the date of the performance of the labor and of the making of improvements;
- (4) at whose instance the work was done or the improvements made;
- (5) the actual amount paid for the work and improvements, and by whom paid, when the work was not done by the owner or the lessee of the owner.

Sec. 27.10.170. Effect of recording affidavit of labor or improvements.

An affidavit recorded under [AS 27.10.160](#) is prima facie evidence of the performance of the work or of making the improvements stated in it.

Sec. 27.10.180. Notice to co-owners to contribute to cost of annual labor or improvements and forfeiture for failure to contribute.

If one of several co-owners fails to contribute the proportion of the expenditures required for annual labor from the co-owner, the co-owners who have performed the labor or made the improvements may, at the expiration of the annual labor year, give the delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days and, if at the expiration of 90 days after the service of the notice in writing or 90 days after the completion of the publication the delinquent co-owner fails or refuses to contribute the proportion of the required expenditures, that co-owner's interest in the claim is forfeited to the co-owners who have made the expenditures.

Sec. 27.10.190. Recording the notice to contribute and affidavits.

(a) Within 120 days after personal service or within 120 days after the completion of publication of the notice provided for in [AS 27.10.180](#), the co-owner who claims the forfeiture shall record in the office of the recorder of the recording district in which the claim is located a copy of the notice with the following affidavits attached:

- (1) an affidavit of the person serving the notice giving the time, place, and manner of service and by whom and upon whom the service was made or, if service was made by publication in a newspaper, an affidavit of the editor, publisher, printer, or foreman of the newspaper giving the name of the newspaper, the place where, and the time during which the notice was published, and the number of insertions;
- (2) an affidavit of the co-owner who claims the forfeiture stating that neither the delinquent co-owner nor any person acting for the delinquent co-owner has paid or tendered to the affiant the delinquent's proportion of the expenditures for annual labor or improvements.

(b) The record of the notice and affidavits or a certified copy of it is prima facie evidence of the facts contained in it.

Sec. 27.10.200. Lienholder may perform the annual labor.

A person who holds a claim to or lien upon an unpatented mining claim under a certificate of sale, mortgage, attachment, levy, judgment, or other lien, may, when necessary for the protection of the lien or claim, go upon the mining claim and perform or cause to be performed the annual labor required by law to prevent forfeiture. Before performing the labor the person shall mail a written notice of intention to perform the annual labor on the claim to the owner of the claim at the owner's last known address.

Sec. 27.10.210. Lien for performance of annual labor.

(a) The person performing or causing to be performed annual labor upon an unpatented mining claim as provided in [AS 27.10.200](#) shall have a lien upon the claim for the assessment work, including the reasonable cost of transportation to and from the claim incurred in doing the work. The lien is enforced either as in other suits for the foreclosure of liens upon real property or as supplemental accruing costs in an action, if any, then pending in which the claim has been levied upon by attachment, execution, or other court process.

(b) A person claiming a lien under this section shall within 90 days after the completion of the annual labor for which the lien is claimed record in the office of the recorder of the recording district in which the property on which the lien is claimed is situated a notice of claim of lien, verified by the oath of the claimant or another person having knowledge of the facts, and stating the name of the owner or reputed owner of the property, the amount of the claim, the time of the performance of the annual labor for which the lien is claimed, the nature of the labor done or improvements made, and the amount of the claim, including costs of transportation, after deducting all just credits and offsets.

(c) An independent suit or action brought to enforce a lien under this section shall be commenced within six months after the recording of the notice of claim of lien.

Sec. 27.10.220. Lien for annual labor is independent of other liens.

The lien given for the performance of annual labor by [AS 27.10.210](#), if the work is done in good faith and necessarily for the protection either of possession under a certificate of sale or of an attachment, levy, mortgage, judgment, or other lien, remains in effect notwithstanding the contemporaneous or subsequent vacation, dissolution, or setting aside of, or redemption from, the certificate of sale, attachment, levy, mortgage, judgment, or other lien.

Sec. 27.10.230. Surveys may qualify as annual labor.

The term "labor" where used in [AS 27.10.130](#) and 27.10.150 includes, without being limited to, geological, geochemical, and geophysical surveys conducted by qualified experts and verified by a detailed report recorded in the recording district office in which the claim is located that sets forth fully

- (1) the location of the work performed in relation to the point of discovery and boundaries of the claim,
- (2) the nature, extent, and cost thereof,
- (3) the basic findings therefrom, and
- (4) the name, address, and professional background of the person or persons conducting the work. Surveys of this kind, however, may not be applied as labor for more than two consecutive years or for more than a total of five years on any one mining claim, and each of these surveys shall be nonrepetitive of any previous survey on the same claim.

Sec. 27.10.240. Definitions for [AS 27.10.230](#). In [AS 27.10.230](#),

- (1) "**geochemical surveys**" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits;
- (2) "**geological surveys**" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits;
- (3) "**geophysical surveys**" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuities in geological formations;
- (4) "**qualified expert**" means an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys.

Chapter 27.19 Reclamation. (See Section IV: Reclamation)

Chapter 27.20 MINE OPERATION

Sec. 27.20.005. Purposes.

This chapter is intended to provide uniform safety standards for all mining operations conducted within the state; to afford maximum freedom of operation to mining operators while assuring proper working conditions for their employees in regard to mining operations; to insure the protection of the public safety and public interest; and to provide for the conservation of natural resources in the public interest in relating to mining operations.

Sec. 27.20.010. Regulations.

(a) The commissioner may adopt the regulations and issue the orders considered necessary to carry out the purposes of this chapter, and the regulations shall have the force and effect of law. Regulations and orders authorized by this chapter shall be consistent with its purposes and may include but are not limited to regulations and orders pertaining to and supplementing the subject matter contained in this chapter. The commissioner, in adopting coal mining safety regulations, shall, as nearly as is practicable, conform to the federal regulations applicable to bituminous coal and lignite mine safety.

(b) All regulations and orders authorized by this chapter shall be adopted in accordance with the [AS 44.62](#) (Administrative Procedure Act).

Sec. 27.20.015. [Repealed, Sec. 3 ch 75 SLA 1963]. Repealed or Renumbered

Sec. 27.20.020. [Repealed, Sec. 3 ch 75 SLA 1963]. Repealed or Renumbered

Sec. 27.20.021. Inspection of mining operations.

The department may enter, inspect, and examine any mining operations in the state and inspect and examine the workings and the machinery belonging to it at all reasonable times, either day or night, but not so as to impede or obstruct the workings of the mining operation more than is necessary. The department may also make inquiry into the condition of the mine, workings, machinery, ventilation, drainage, and methods of lighting or using lights and into methods, things, and appliances connected with and relating to the health and safety of persons in or about the mine. The manager of each mine shall furnish the means necessary for entry, inspection, examination, inquiry, and exit.

Sec. 27.20.025. [Repealed, Sec. 3 ch 75 SLA 1963]. Repealed or Renumbered

Sec. 27.20.030. [Repealed, Sec. 3 ch 75 SLA 1963]. Repealed or Renumbered

Sec. 27.20.031. Correcting unsafe conditions.

If, upon examination, a mine or a portion of it is found to be in an unsafe condition as defined by regulations adopted under this chapter or if proper first aid or mine rescue measures have not been adopted, the department shall at once serve notice in writing upon the owner, lessee, agent, operator, manager, or superintendent of the mine, setting out the nature of the defects that render the mine unsafe or insecure and the place in the mine where the defects exist, and require the repairs necessary to remedy the defects to be made within a specified time. If circumstances require it, the department shall forbid the operation of the mine or portion of it that is declared unsafe or insecure, except for the purpose of making necessary repairs to make the mine safe for employees in it and for the purpose of permitting inspection and investigation of the conditions described in the notice.

Sec. 27.20.035. [Repealed, Sec. 3 ch 75 SLA 1963]. Repealed or Renumbered

Sec. 27.20.040. [Repealed, Sec. 3 ch 75 SLA 1963]. Repealed or Renumbered

Sec. 27.20.041. Reports to be confidential.

The department shall keep confidential, upon the request of the person supplying the information, all reports and information required to be filed by regulations adopted under this chapter and all information deducible from filed information. Except by order of a court of competent jurisdiction, the information shall be revealed only to authorized employees and officers of the state and persons authorized in writing by the persons supplying the information. The information may also be made available to the public in the form of statistical reports if the identity of any particular person or mine operator is not revealed by the reports.

Sec. 27.20.045. [Repealed, Sec. 3 ch 75 SLA 1963]. Repealed or Renumbered

Sec. 27.20.050. [Repealed, Sec. 3 ch 75 SLA 1963]. Repealed or Renumbered

Sec. 27.20.051. Penalties.

A person who fails to comply with this chapter or with a regulation or order adopted under it, upon conviction, is punishable by a fine of not more than \$1,000, by imprisonment for not more than one year, or by both.

Sec. 27.20.055. [Repealed, Sec. 3 ch 75 SLA 1963]. Repealed or Renumbered

Sec. 27.20.060. [Repealed, Sec. 3 ch 75 SLA 1963]. Repealed or Renumbered

Sec. 27.20.061. Definitions.

In this chapter,

(1) "**department**" means the Department of Natural Resources;

(2) "**mining operation**" includes all parts of a mine or mineral exploration project in the state and any mining or treatment plant or equipment connected with it, underground or on the surface, that contributes or may contribute to the mining or treatment of ore or other metalliferous or nonmetalliferous mineral product; the term also includes a site of tunneling, shaft-sinking, quarrying, or excavation of rock for other purposes, including but not limited to the construction of water or highway tunnels or drains or of underground sites for the housing of industrial plants or other facilities.

Sec. 27.20.065. - 27.20.480. [Repealed, Sec. 3 ch 75 SLA 1963]. Repealed or Renumbered

Chapter 27.21 ALASKA SURFACE COAL MINING CONTROL AND RECLAMATION ACT

Article 01. LEGISLATIVE FINDINGS AND PURPOSE (AS 27.21.010)

(See Section XII: Surface Coal)

Article 02. SURFACE COAL MINING (AS 27.21.020 - .260)

(See Section XII: Surface Coal)

Article 03. ABANDONED MINES (AS 27.21.270 - .340)

(See Section XIII: Abandoned Mines)

Article 04. GENERAL PROVISIONS (AS 27.21.900 - .999)

(See Section XII: Surface Coal)

Chapter 27.22 BONUS FOR DISCOVERY AND PRODUCTION (AS 27.22.010 - .060)

(See Section V: Bonus and Incentives)

Chapter 27.25 GENERAL PROVISIONS *[Renumbered as AS 27.40].*

Chapter 27.30 EXPLORATION INCENTIVE CREDITS (AS 27.30.010 - .099)

(See Section V: Bonus and Incentive)

Section III: Mining Leasing

Title 38. Public Land

Chapter 38.05 Alaska Land Act

Article 7: Leasing of Mineral Land

Sec. 38.05.135. Leasing generally; royalty and net profit share payments and interest.

(a) Except as otherwise provided, valuable mineral deposits in land belonging to the state shall be open to exploration, development, and the extraction of minerals. All land, together with tide, submerged, or shoreland, to which the state holds title to or to which the state may become entitled, may be obtained by permit or lease for the purpose of exploration, development, and the extraction of minerals. Except as specifically limited by [AS 38.05.131](#) - 38.05.181, land may be withheld from lease application on a first-come, first-served basis, and offered only on a competitive bid basis when determined by the commissioner to be in the best interests of the state.

(b) When mineral land is to be leased, in addition to any other notice given, notice must also be given as provided in [AS 38.05.945](#).

(c) Payment of a royalty or a net profit share payment to the state under a lease issued under [AS 38.05.135](#) - 38.05.181 becomes due on the date and in the manner specified in the lease or in a regulation adopted by the commissioner.

(d) If a royalty or net profit share payment to which the state is entitled under [AS 38.05.135](#) - 38.05.181 is not paid or is underpaid when it becomes due under (c) of this section, the unpaid amount of the royalty or net profit share payment bears interest in a calendar quarter at the rate of five percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District as of the first day of that calendar quarter, or at the annual rate of 11 percent, whichever is greater, compounded quarterly as of the last day of that quarter.

(e) If a royalty or net profit share payment to which the state is entitled under [AS 38.05.135](#) - 38.05.181 is overpaid, interest at the rate and compounded in the manner provided in (d) of this section shall be allowed and paid on the overpayment. The interest allowance is subject to the following:

(1) if the state grants a credit against future payments for the overpayment, the state shall pay interest on the overpayment

(A) from the date that is the later of the date the overpayment was

(i) due; or

(ii) received;

(B) to the date that is the earlier of the date

(i) of notice to the lessee of the credit; or

(ii) on which the lessee actually takes the credit;

(2) if the state refunds the overpayment, the state shall pay interest on the overpayment

(A) from the date that is the later of the date the overpayment was

(i) due; or

(ii) received;

(B) to the date the state issues the refund.

(f) The issuance by the state and acceptance by a lessee of a credit or refund of an overpayment under (e) of this section does not affect any right of the state or lessee to claim an adjustment and interest on the overpayment.

(g) *[Repealed, Sec. 1 ch 37 SLA 2001].*

Sec. 38.05.137. Leasing agreements.

The commissioner is authorized to enter into cooperative mineral leasing agreements with the United States regarding land which is the subject of a title dispute between federal and state authorities. Any such lease need not conform to the provisions of state law applicable to state leases issued under the authority of this chapter.

Sec. 38.05.140. Limitations.

(a) A person may not take or hold coal leases or permits during the life of coal leases on state land exceeding an aggregate of 92,160 acres, except that a person may apply for coal leases or permits for acreage in addition to 92,160 acres, not exceeding a total of 5,120 additional acres of state land. The additional area applied for shall be in multiples of 40 acres, and the application shall contain a statement that the granting of a lease for additional land is necessary for the person to carry on business economically and is in the public interest. On the filing of the application, except as provided by [AS 38.05.180\(ff\)\(3\)](#) or [38.05.180\(gg\)](#), the coal deposits in the land covered by the application shall be temporarily set aside and withdrawn from all other forms of disposal provided under [AS 38.05.135](#) - 38.05.181.

(b) The commissioner shall, after posting notice of the pending application in the local land office, conduct public hearings on the application for additional acreage. After public hearings, to the extent the commissioner finds to be in the public interest and necessary for the applicant in order to carry on business economically, the commissioner may, under regulations adopted by the commissioner, permit the person to take or hold coal leases or permits for an additional aggregate acreage of not more than 5,120 acres.

(c) A person may not take or hold at one time phosphate leases on state land exceeding in the aggregate 10,240 acres. A person may not take or hold sodium leases or permits during the life of sodium leases on state land exceeding in the aggregate acreage 5,120 acres, except that the commissioner may, where it is necessary in order to secure the economic mining of sodium compounds, permit a person to take or hold sodium leases or permits for up to 15,360 acres. A person may

not take or hold at any one time oil or gas leases exceeding in the aggregate 500,000 acres granted on tide and submerged land, including leases held both as lessee and under option or operating agreement from others. A person may not take or hold at any one time oil or gas leases exceeding in the aggregate 750,000 acres on all land other than tide and submerged land, of which not more than 500,000 acres may be located north of the Umiat baseline, including leases held both as lessee and under option or operating agreement from others. Where more than a single person holds an interest in an oil or gas lease, each person shall be charged only with that percentage of the total acreage that corresponds to its percentage share of the total beneficial interest in the lease.

(d) The commissioner, for the purpose of encouraging the greatest ultimate recovery of coal, oil shale, phosphate, sodium, potassium, sulphur, and geothermal resources and in the interest of conservation of natural resources, after public hearing, or, when the state's title to land beneath navigable waters has been legally challenged by the United States and litigation initiated, may waive, suspend, refund, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion of a leasehold segregated for royalty purposes, whenever the commissioner determines that it is necessary to do so in order to promote development, or that the lease cannot be successfully operated under its terms. If the commissioner, in the interest of conservation, directs or assents to the suspension of operations and production under a lease granted, the payment of acreage rental or of minimum royalty prescribed by the lease may be suspended during the period of suspension of operations and production. The term of the lease shall be extended by adding the period of suspension to the lease.

(e) The provisions of (d) of this section that apply to waiver, suspension, refund, or reduction of rental or minimum royalty apply to rental or minimum royalty paid before or after June 19, 1970, on any lease covering land beneath navigable waters which, according to the records of the division of lands, is in effect on June 19, 1970.

(f) The submerged and shoreland lying north of 57 degrees, 30 minutes, North latitude and east of 159 degrees, 49 minutes, West longitude within the Bristol Bay drainage are designated as the Bristol Bay Fisheries Reserve. Within the Bristol Bay Fisheries Reserve, a surface entry permit to develop an oil or gas lease or an exploration license under [AS 38.05.131](#) - 38.05.134 may not be issued on state owned or controlled land until the legislature by appropriate resolution specifically finds that the entry will not constitute danger to the fishery.

Sec. 38.05.145. Leasing procedure.

(a) Deposits of coal, phosphates, oil shale, sodium, potassium, oil, gas, geothermal resources and state land containing these deposits are subject to disposition under regulations, recommended by the director and adopted by the commissioner, and the provisions of [AS 38.05.145](#) - 38.05.181. In applying the acreage limitations the commissioner may apply the rule of approximation. The uses of the rule of approximation made before March 31, 1960, by the commissioner are ratified.

(b) *[Repealed, Sec. 6 ch 155 SLA 1978].*

Sec. 38.05.150. Coal.

(a) The commissioner may, and upon the petition of a qualified applicant, shall divide coal land or the deposits of coal owned by the state into leasing tracts of 40 acres each, or multiples of 40 acres, and in the form which will permit the economical mining of the coal in the tract.

(b) Thereafter the commissioner may, upon the request of a qualified applicant or otherwise, from time to time, offer the land or deposits of coal for leasing. Each lease shall be awarded to a qualified applicant by competitive bidding or by the method prescribed by regulation.

(c) Where prospecting or exploration work is necessary to determine the existence or workability of coal deposits in an unclaimed and undeveloped area, the commissioner may issue to qualified applicants prospecting permits for a term of three years, covering not more than 5,120 acres with each permit. The commissioner shall grant a two-year extension of the initial three-year term of the permit if the permittee has conducted reasonably diligent prospecting or exploration activities in the area covered by the permit, has not been able to determine the existence and workability of coal deposits in the area, and wishes to continue prospecting or exploring in the area. The commissioner may grant up to three two-year extensions of the initial three-year term of the permit. At any time during the period of the permit, the permittee is entitled to a lease after submitting a mining plan satisfactory to the commissioner for that portion of the land in the permit as is shown to the satisfaction of the commissioner to contain coal in commercial quantities or to be needed for mining, reclamation, or processing the coal.

(d) For the privilege of mining or extracting the coal in the land covered by the lease, the lessee

(1) shall pay to the state the royalties specified in the lease; the royalties shall be fixed before offering the lease, and shall be effective for a period of not more than 20 years; the royalties shall be not less than five cents a ton of 2,000 pounds; the royalty payment is subject to the exploration incentive credit authorized by [AS 27.30](#);

(2) shall also pay an annual rental, payable at the date of the lease and annually thereafter, on the land or coal deposits covered by the lease, at a rate fixed by the commissioner before offering the lease; the annual rental shall be effective for a period of not more than 20 years; the annual rental shall be not less than 25 cents an acre for the first year of the lease, not less than 50 cents an acre for the second year, third year, fourth year and fifth year, and not less than \$1 an acre for each year thereafter during the continuance of the lease; the rental for each year shall be credited against the royalties as they accrue for that year; each lease shall provide that the annual rental payment is subject to adjustment at intervals of no more than 20 years and adjustments shall be based on the current rates for properties similarly situated.

(e) Each lease shall be for an indeterminate period upon condition of diligent development and continued operation of the mine, except when operation is interrupted by strikes, the elements, or casualties not attributed to the lessee.

(f) Notwithstanding [AS 38.05.132\(a\)](#), 38.05.180(ff), or 38.05.180(gg), a lease entered into under this section gives the lessee the right to vent or remove methane and other gas held in association with the coal in the land covered by the lease to ensure safe coal mining operations.

Sec. 38.05.152. Sodium.

(a) The commissioner may grant a prospecting permit to a qualified applicant. The permit gives the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of sodium in land belonging to the state for a period of not exceeding two years. The area included in a prospecting permit may not exceed 2,560 acres of land in reasonably compact form. Upon showing to the satisfaction of the commissioner that valuable deposits of sodium minerals have been discovered by the permittee within the area covered by the permit, and that the land is chiefly valuable for these deposits, the permittee is entitled to a lease for all or a part of the land embraced in the prospecting permit at a royalty of not less than two percent of the quantity or gross value of the output of sodium compounds and other related products at the point of shipment to market. The commissioner may lease land known to contain valuable deposits of sodium compounds that is not covered by permits or leases through advertisement, competitive bidding, or other methods prescribed by regulation. The area covered by a lease may not exceed 2,560 acres.

(b) Each lease shall be conditioned upon the same royalty payment specified in (a) of this section and the payment in advance of a rental of 25 cents an acre for the first calendar year or fraction of it, 50 cents an acre for the second calendar year, third calendar year, fourth calendar year, and fifth calendar year, and \$1 an acre a year thereafter during the continuance of the lease. The rental for any one year shall be credited against royalties accruing for that year.

(c) A lease shall be for a period of 20 years with preferential right in the lessee to renew for successive periods of 10 years upon terms and conditions prescribed by the commissioner.

Sec. 38.05.154. Sulphur.

(a) Under regulations adopted by the commissioner, the commissioner shall grant a prospecting permit for sulphur to a qualified applicant. The permit gives the applicant the exclusive right to prospect for sulphur, in land belonging to the state, for a period not exceeding two years. The area included in a permit may not exceed 2,560 acres of land in reasonably compact form. Upon showing to the satisfaction of the commissioner that valuable deposits of sulphur have been discovered by the permittee within the area covered by the permit, and that the land is chiefly valuable for these deposits, the permittee is entitled to a lease for all or a part of the land embraced in the prospecting permit, at a royalty of five percent of the quantity or gross value of the output of sulphur at the point of shipment to market. The commissioner may lease land known to contain valuable deposits of sulphur that is not covered by permits or leases through advertisement, competitive bidding, or other methods prescribed by regulation. The area covered by the lease may not exceed 2,560 acres.

(b) Each lease shall be conditioned upon the payment by the lessee of the royalty fixed in the lease and the payment in advance of a rental of 50 cents an acre a year. The rental for any one year shall be credited against the royalties accruing for that year.

Sec. 38.05.155. Phosphates.

(a) The commissioner may lease to qualified applicants land belonging to the state which contains deposits of phosphates and associated and related minerals, when it is in the public interest to do so. The commissioner may lease land through advertisement, competitive bidding, or other methods prescribed by regulation. The land shall be leased in units reasonably compact in form and not exceeding 2,560 acres in each unit.

(b) Each lease shall be conditioned upon the payment to the state of the royalties specified in the lease. The commissioner shall fix the royalties in advance of offering the lease. The royalties shall be not less than five percent of the gross value, at the point of shipment to market, of the output of phosphates or phosphate rock, and associated or related minerals. Each lease shall provide for the payment of a rental payable at the date of the lease and annually thereafter. The rental shall be not less than 25 cents an acre for the first year, 50 cents an acre for the second year and third year, and \$1 an acre for each year thereafter. The rental paid for any year shall be credited against the royalties for that year. Each lease shall be for a term of 20 years and so long thereafter as the lessee complies with the terms and conditions of the lease.

Sec. 38.05.157. Potassium.

(a) Under regulations adopted by the commissioner, the commissioner may grant a prospecting permit to a qualified applicant. The permit gives the applicant the exclusive right to prospect for chlorides, sulphates, carbonates, borates, silicates, or nitrates of potassium, in land belonging to the state, for a period not exceeding two years. The area included in a permit may not exceed 2,560 acres of land in reasonably compact form. Upon showing to the satisfaction of the commissioner that valuable deposits of potassium compounds have been discovered by the permittee within the area covered by the permit, and that the land is chiefly valuable for these deposits, the permittee is entitled to a lease for all or a part of the land embraced in the prospecting permit, at a royalty of not less than two percent of the quantity or gross value of the output of potassium compounds and other related products, except sodium, at the point of shipment to market. The commissioner may lease land known to contain valuable deposits of potassium compounds that is not covered by permits or leases through advertisement, competitive bidding, or other methods prescribed by regulation. The area covered by the lease may not exceed 2,560 acres.

(b) Each lease shall be conditioned upon payment by the lessee of a royalty of not less than two percent of the quantity or gross value of the output of potassium compounds and other related products, except sodium, at the point of shipment to market, and the payment in advance of a rental of 25 cents an acre for the first calendar year or fraction of it, 50 cents an acre for the second calendar year, third calendar year, fourth calendar year, and fifth calendar year, and \$1 an acre a year thereafter during the continuance of the lease. The rental for any one year shall be credited against royalties accruing for that year.

(c) Each lease shall be for a term of 20 years and so long thereafter as the lessee complies with the terms and conditions of the lease.

Article 8: Mining Rights Mining Leasing

Sec. 38.05.205. Mining leasing.

(a) Prior discovery, location, and recording shall initiate prior rights to mineral deposits subject to [AS 38.05.185](#) - 38.05.275 in or on state land, other than submerged land, which is open to mining leasing. Locations shall be made and certificates of location recorded in accordance with [AS 38.05.195](#). If the located land is available only for leasing, the director shall publish in a paper of general circulation in the area of the location, notice of the recording of the location and notice that a mineral lease will be issued. The notice may be combined with notices of locations either in the same general area or statewide. Unless a conflicting location exists, no later than two weeks after publication of the notice, an application form for a mining lease shall be mailed to the locator by the director. A lease application shall be filed with the director by the locator within 90 days after receipt of the form. If the located land is not available for leasing, notice shall be given the locator by the director and the locator's prior rights shall terminate. A mining lessee has the exclusive rights of possession and extraction of all minerals subject to [AS 38.05.185](#) - 38.05.275 lying within the boundaries of the lease or location. Mining leases may be issued for one location or for a group of contiguous locations held in common. Minerals may not be mined and marketed or used until a lease is issued, except for limited amounts necessary for sampling or testing.

(b) *[Repealed, Sec. 10 ch 101 SLA 1989].*

(c) A mining lease shall be for any period up to 55 years, and is renewable if requirements for the lease remain satisfied. Annual rental and production royalties shall be paid as required under [AS 38.05.211](#) and 38.05.212. A valid mining claim located and held under [AS 38.05.195](#) may be converted to a lease at any time upon application by the owner, and issuance by the commissioner. Rights granted by a mining lease may not be exercised until the lease has been filed for record in the recording district where the land is located.

Sec. 38.05.250. Prospecting permits and leases on tide and submerged land.

(a) The exclusive right to prospect for deposits of minerals subject to [AS 38.05.185](#) - 38.05.275 in or on tide and submerged state land may be granted by a permit issued by the director. A permit shall be granted to the first qualified applicant. A permit may not include an area larger than 2,560 acres, subject to the rule of approximation. Land subject to a prospecting permit shall be as compact in form as possible taking into consideration the area involved. The term of the permit shall be 10 years. Prospecting permits shall be conditioned upon payment of rental against which credit shall be given for useful expenditures on land covered by the permit or group of contiguous permits under common ownership or assignment. Excess expenditures may be applied against rentals due for the following four years. The rental shall be \$3 per acre for the first two-year period of the permit, payable on the second anniversary of the permit and \$3 per acre for each following year, payable annually on the anniversary date of the permit. Minerals from land under a prospecting permit may not be mined and marketed or used, except for limited amounts necessary for sampling or testing. A person may not take or hold prospecting permits for minerals on state land under this section exceeding in the aggregate 300,000 acres. A person may not take or hold leases for minerals on state land under this section exceeding in the aggregate 100,000 acres.

(b) A noncompetitive lease shall be granted to a holder of a prospecting permit for so much of the land subject to the permit as is shown to the satisfaction of the director to contain workable mineral deposits. Submerged land containing known deposits of minerals subject to [AS 38.05.185](#) - 38.05.275 may, in the discretion of the director, be offered by competitive bid. The land shall be leased to the qualified person offering the highest amount of cash bonus.

(c) Each submerged land mining lease shall be for a period of up to 20 years and for so long as there is production in paying quantities from the leased area. A submerged land mining lease may be renewed for a period of up to 20 years at the discretion of the director if the director determines that the renewal is in the best interests of the state.

(d) The commissioner may, on the request of the lessee, assent to the suspension of operation and production under a lease whenever in the judgment of the commissioner the suspension is necessary to promote development of the lease or the lease cannot be successfully operated under its terms. The payment of acreage rental may be suspended during the period of suspension of operation and production. The suspension of the lease shall extend the term of the lease by adding the period of suspension to the lease. The commissioner may extend the term of a nonproducing lease on an application by the lessee accompanied by a showing that the lessee is reasonably close to attaining production and that, despite diligent good faith efforts by the lessee, the lessee is not able to produce due to force majeure, depressed market conditions, or other situations beyond the reasonable control of the lessee. A suspension or extension granted under this subsection may not exceed two years.

Section III
Mineral Leasing
Administrative Regulations

Title 11: Natural Resources

Chapter 82: MINERAL LEASING PROCEDURE

Article 1
Availability of Land

11 AAC 82.100. Applicability

The provisions of this chapter apply to the leasing and administration of all land under [AS 38.05.135](#) - 38.05.183, Leasing of Mineral Lands, except as may be specifically provided by the statute or the sections of the regulations dealing with a specific mineral. In the event of a conflict between this chapter and any express and specific provisions of a lease or permit carrying an interest in land issued before the effective date of the conflicting regulations, the provision of a lease or permit shall control, unless otherwise agreed by the lease holder and the commissioner.

11 AAC 82.105. Classification for leasing

All land not required to be leased competitively by law or not classified competitive by order of the commissioner is classified noncompetitive for mineral leasing purposes. A change of classification from noncompetitive to competitive rejects any pending application for noncompetitive lease or permit for the land reclassified.

11 AAC 82.110. Opening noncompetitive land

(a) Noncompetitive land, including shoreland, is not open for lease or permit until the commissioner has published a notice declaring land open for lease or permit.

(b) The notice of opening must describe the areas and minerals open. In addition, for any land made available by the opening, the notice must

- (1) describe the area or areas available;
- (2) specify the method of land description to be followed in making applications for leases or permits;
- (3) state the date upon which application may first be received;
- (4) state that all applications received within 30 days after the stated date are considered to be filed simultaneously and that the first three priorities among those applications is determined by public drawing;
- (5) state that the lease or permit form and forms for lease or permit applications may be obtained and the applicable regulations examined at a designated office of the Department of Natural Resources and state the address of the office.

11 AAC 82.115. Opening competitive land

Competitive land is not open to leasing until the commissioner publishes a notice of lease offer as prescribed in [11 AAC 82.415](#).

Article 2
Qualifications

11 AAC 82.200. Qualifications (a) Leases, oil and gas exploration licenses, or permits issued under [AS 38.05.131](#) - 38.05.184 may be applied for, issued to, or held by

- (1) a person who has reached the age of majority;
- (2) a corporation qualified to do business in Alaska;
- (3) a legal guardian or trustee of a qualified individual;
- (4) an association of entities listed in this subsection.

(b) Mineral permits and leases under [AS 38.05.185](#) - 38.05.275 may be applied for, issued to, or held by a person, corporation, legal guardian, or trustee qualified under [AS 38.05.190](#), or by an association of qualified entities.

11 AAC 82.205. Statement of qualifications

(a) An individual, in order to be qualified to apply for, obtain, or transfer an interest in a permit, oil and gas exploration license, or lease issued under [AS 38.05.131](#) - 38.05.184, shall submit to the department

- (1) a signed, dated statement including the applicant's name, address, telephone number, and a certification that the applicant is of the age of majority; or
- (2) in case of a guardian, trustee, or other legal representative of a person, a certified copy of the court order authorizing the representative to act in that capacity and to fulfill on behalf of the person all obligations arising under the lease, oil and gas exploration license, or permit, and the representative's certification of the age of the person and the representative; or
- (3) in the case of an agent acting on behalf of an individual, an original or certified copy of a notarized power of attorney authorizing the agent to act on behalf of the individual.

(b) An individual, in order to be qualified to apply for, obtain, or transfer an interest in a permit, or lease issued under [AS 38.05.185](#) - 38.05.275, shall submit to the department

- (1) the documents required by (a) of this section; and
- (2) a signed, dated statement including the applicant's name, address, telephone number, and certification that the applicant is a citizen of the United States, or is an alien qualified under [AS 38.05.190](#).

(c) A corporation, in order to be qualified to apply for, obtain, or transfer an interest in a permit, oil and gas exploration license, or lease issued under [AS 38.05.131](#) - 38.05.184, shall submit to the department

- (1) the current address of the corporation;
- (2) a list of the individuals authorized to act on its behalf with respect to the mineral specified in the permit, oil and gas exploration license, or lease;
- (3) an original or certified copy of a notarized power of attorney authorizing any agent who is not a current officer but who has been authorized by the corporation to act on its behalf with respect to the mineral specified in the permit, oil and gas exploration license, or lease;
- (4) a certificate of compliance for a corporation qualified to do business in Alaska or, if filing for a lease sale, oil and gas exploration license, or permit for the first time, either a

(A) certificate of authority for a foreign corporation qualified to do business in Alaska, or

(B) certificate of incorporation for a domestic corporation qualified to do business in Alaska.

(d) A corporation, in order to be qualified to apply for, obtain, or transfer an interest in a permit or lease issued under [AS 38.05.185](#) - 38.05.275, shall submit to the department

(1) the documents required by (c) of this section; and

(2) a statement that not more than 50 percent of the stock of the corporation is owned or controlled by persons who are not qualified under [AS 38.05.190](#).

(e) A partnership, joint venture, or other unincorporated association, in order to be qualified to apply for, obtain, or transfer an interest in a permit, oil and gas exploration license, or lease issued under [AS 38.05.131](#) - 38.05.275, shall submit to the department

(1) a statement describing the business relationship between the members of the association, joint venture, or partnership; and

(2) the documents required by (a) - (d) of this section for each participant as appropriate.

(f) If it is still current and accurate, material previously filed with the department that satisfies all or part of the requirements of this section may be incorporated into an application by reference to the filing date of the previously filed material and by providing a statement as to any material changes or amendments.

Article 3 **Acreage Limitations**

11 AAC 82.300. Chargeable acreage

(a) The acreage limitations imposed by [AS 38.05](#) apply to all acreage held or controlled, directly or indirectly, whether

(1) by lease or permit interest in it;

(2) by ownership or control of stock in a corporation or corporations holding or controlling chargeable acreage; or

(3) under option, operating agreement, sublease, trust, contract or written or oral understanding of any kind from others.

(b) The acreage limitations do not apply to applications or bids prior to the issuance of a lease or permit.

(c) If two or more persons hold or control interests in any lease or permit, each of the persons is charged only with that percentage of the total acreage which corresponds to his percentage of interest in the lease.

(d) If a person holds or controls an interest in a lease or permit as a stockholder of a corporation holding or controlling leases or an interest in them, the person is charged his proportionate share of the corporation's chargeable acreage, except that if a stockholder owns or controls less than five percent of the stock of a corporation whose stock is held by the public, he is not regarded as holding or controlling any portion of any chargeable acreage held or controlled by the corporation. If a stockholder is charged with a portion of a corporation's chargeable acreage, the corporation must nevertheless include the acreage in any report required under [11 AAC 82](#) - [11 AAC 84](#).

(e) When a lease or permit or any direct or indirect interest in one or control of one is transferred, any resulting change in the chargeability of acreage is effective on the date of filing an application for approval of the transfer, subject to readjustment if the transfer is disapproved.

11 AAC 82.305. Statements

At any time any person holding or controlling chargeable acreage may be required by the commissioner to file with the department a statement showing, as of a specified date, the serial number and the date of each lease or permit in which he holds or controls any interest, setting forth the acreage covered by it, the nature and extent of his interest in it and the acreage chargeable to him by virtue of that interest.

11 AAC 82.310. Reduction of holdings

If a person holds or controls acreage in excess of the prescribed limitations, the commissioner will give notice of the excess acreage to the person. The person shall, within 90 days following receipt of the notice, by assignment or surrender, reduce the acreage held or controlled to the prescribed limitation and file proof of the reduction with the commissioner. If a person fails to reduce the acreage within the allowed time, the last interest or interests acquired by the person that created the excess acreage holding become in default and subject to forfeiture in their entirety, even though only part of the acreage in the lease, oil and gas exploration license, or interest constitutes excess holding.

Article 4 **Competitive Bidding**

11 AAC 82.400. Parcels offered for competitive lease

Competitive land will be offered for lease at the discretion of the commissioner in lease parcels which he may determine to be as nearly compact in form as possible.

11 AAC 82.405. Method of bidding

Bidding may be by sealed bid or at public outcry auction unless otherwise prescribed by law or regulation dealing with the subject. If not so prescribed, the method of bidding is at the discretion of the commissioner.

11 AAC 82.410. Minimum bid

The commissioner may prescribe the minimum bid that will be considered at any lease sale. Prescribing a minimum bid does not prevent the rejection of bids as provided in [11 AAC 82.450](#).

11 AAC 82.415. Public notice

(a) Notice required under [AS 38.05.945](#)(a)(3) of a decision under [AS 38.05.035](#)(e) will

(1) describe the land and interests in that land proposed to be offered for disposal;

(2) note the public availability of the division's preliminary analysis for the disposal;

(3) contain any other information the director determines to be necessary to inform the public about the disposal; and

(4) provide an opportunity for public comment regarding the proposed disposal.

(b) Notice required under [AS 38.05.945](#)(a)(4) of a competitive disposal will

(1) describe the land and the interests in that land to be offered for disposal;

(2) state the time and place of disposal;

(3) state the availability of the director's final finding and decision regarding the disposal;

- (4) specify the terms and the conditions of the sale relating to rents, royalties, leasing methods, bond requirements, and surface entry; and
- (5) contain any other information the director determines necessary to inform the public about the disposal.

(c) After a notice of disposal under (b) of this section has been issued, the director will, in the director's discretion, issue supplemental notices correcting information provided in the notice, or providing additional information regarding the disposal. A supplemental notice which substantially alters a term or condition of a notice regarding rentals, royalties, leasing methods, bonding requirements, surface entry restrictions, or acreage available for disposal will comply with [AS 38.05.945](#)(b) and (c). Other supplemental notices will be issued at the time and in a manner which the director deems appropriate to the particular supplemental notice. For purposes of this subsection, a supplemental notice substantially alters a term or condition of a notice if it:

- (1) changes a rental or royalty rate;
- (2) changes the leasing method selected pursuant to [AS 38.05.180](#);
- (3) as a technical correction, causes the published acreage of an individual tract which is not deleted from the sale to increase by more than 3 percent from the acreage listed for the tract in the final notice; or
- (4) is otherwise determined by the director to substantially alter a term or condition of a final notice.

(d) A supplemental notice which alters the acreage of a tract will be issued no later than 10 days before the date of sale. Otherwise, the affected tract will be deleted from the sale.

11 AAC 82.420. Bid form

Bids must be signed and submitted on a bid form supplied by the department for the particular lease offer or on a verbatim copy of one. No bid containing or accompanied by any condition, qualification, or material alteration may be considered.

11 AAC 82.425. Bid deposit

Any bid deposit required by statute, regulation or the sale notice must be by cashier's or certified check drawn on any solvent bank in the United States, by money orders, or by cash or any combination of these. The checks and money orders shall be made payable to the Department of Revenue of the State of Alaska.

11 AAC 82.428. Qualification of bidders

Before the date of a competitive lease sale, a bidder must comply with [11 AAC 82.200](#) and [11 AAC 82.205](#).

11 AAC 82.430. Joint bids

Joint bids must

- (1) disclose, and the bid form must be signed by or on behalf of, each person who has a working interest in the bid or who will receive a working interest in any lease issued in response to the bid by virtue of any agreement or understanding, oral or written;
- (2) state the percentage of interest of each bidder; and
- (3) designate one person who is authorized to receive notices on behalf of all the bidders.

11 AAC 82.435. Bids at public auction

Each bidder at a sale by public auction shall deposit with the commissioner or other officer conducting the sale the deposit and information required by [11 AAC 82.425](#) - [11 AAC 82.430](#).

11 AAC 82.440. Opening bids, holding auctions

Sealed bids must be opened publicly, and public auctions must be held at the time and place specified in the notices. No bid which the commissioner determines to be nonresponsive to the sale notice may be given further consideration at the public sale proceedings.

11 AAC 82.445. Incomplete bids

No bid may be considered unless supported by the deposit and information required by [11 AAC 82.425](#), [11 AAC 82.428](#), and [11 AAC 82.430](#) unless the commissioner determines that any omission was immaterial or due to excusable inadvertence and if the omission is corrected in the manner provided by notice of sale.

11 AAC 82.450. Rejection of bids

The commissioner will, in his discretion, reject any or all bids on any tract or tracts.

11 AAC 82.455. Tie bids

If two or more sealed bids are equal in amount and are the highest received at a lease sale, or for an oil and gas exploration license, the commissioner will promptly notify the highest bidders and invite them to submit new bids, not lower than the original bids, within 30 days after the notice. If the new bids fail to break the tie, the commissioner will, in the commissioner's discretion, issue new invitations in like manner until the tie is broken, or will at any time notify the bidders that a drawing will be held at a time and place stated in the notice and award the lease or oil and gas exploration license by lot.

11 AAC 82.460. Additional information

Before the right to a lease is awarded, any bidder may, on his own initiative or at the request of the commissioner, submit additional information regarding his financial responsibility and his qualifications.

11 AAC 82.465. Bonus: rental: bond

When the right to a lease is awarded, the commissioner will notify the interested parties. Within the period of time specified in the information to bidders and the award notice, the successful bidder shall wire transfer federal funds in the amount of the balance of the cash bonus, accrued interest and annual rental, submit two fully executed copies of the lease form and, if required, file a bond. If a successful bidder fails to comply with the provisions of this section, the amount deposited with his bid is forfeited to the state.

11 AAC 82.470. Issuance of lease

Upon compliance with sec. 465 of this chapter, the commissioner will sign the lease on behalf of Alaska and mail one fully executed copy to the lessee.

11 AAC 82.475. Return of deposits

The commissioner will return the bid deposit of all unsuccessful bidders within five working days after a lease sale or the awarding of an oil and gas exploration license. If the high bid is disqualified after bid deposits have been returned, the commissioner will, in the commissioner's

discretion, award the second and third highest bidders the opportunity to restore their bids and deposits within 10 days after receipt of the notice of the award.

Article 5 **Noncompetitive Procedures**

11 AAC 82.500. Applications

(a) Except as otherwise provided in regulations regarding applications for shallow natural gas leases authorized under [AS 38.05.177](#), applications for noncompetitive leases or permits for a mineral may be filed on any noncompetitive land opened for leasing of that mineral in accordance with [11 AAC 82.100](#) - [11 AAC 82.115](#).

(b) Applications filed during a simultaneous filing period must be filed by mail or by personal delivery. Applications for land available on a first-come, first-served basis may also be filed by telegram, radiogram, or cablegram if

(1) the name and address of the applicant and the area applied for are clearly identified; and

(2) the application is confirmed within 15 days after the initial filing by a signed application meeting all the requirements of [11 AAC 82](#) - [11 AAC 84](#) and [11 AAC 88](#).

(c) Applications must be filed on forms provided by the department or exact image copies of them.

(d) Applications must be signed by or on behalf of each person who will receive any interest in any lease or permit if issued, by virtue of any agreement or understanding, oral or written.

11 AAC 82.505. Description of land

(a) Applications for land available in a simultaneous filing period must describe the land as specified in the notice providing for the simultaneous filing period.

(b) Application for land available on a first-come, first-served basis must describe the land by legal subdivision, section, township, range, and meridian if the land has been surveyed under the public land rectangular system or is included in protracted surveys approved by the department or by the Bureau of Land Management.

11 AAC 82.510. Area

The land requested in an application must be compact in form. Unless specified otherwise in the section dealing with the subject of the application, the land in an application will not be considered compact in form unless

(1) full sections are requested (the lease or permit being issued only for the available land);

(2) all sections applied for are contiguous and not merely "adjacent," as defined in [11 AAC 88.185](#) (sections touching only at a point are not considered contiguous); and

(3) the length of the land requested does not exceed four times the width.

11 AAC 82.515. Terminated permits and leases

Noncompetitive land on which a permit or lease or a part of one is expired, relinquished, or otherwise terminated may be offered at a noncompetitive drawing. The commissioner will post a notice listing the land to be offered at a noncompetitive drawing in the place provided for such postings. The notice will provide for a 30-day simultaneous filing period to file applications for the land listed in the notice. The notice might also state that adjacent noncompetitive land has been removed from filing on a first-come, first-served basis and is included with the

terminated tracts for the purpose of making more compact tracts. Only applications filed during the simultaneous filing period may be included in the noncompetitive drawing.

11 AAC 82.520. Applications in simultaneous filing periods

(a) No applicant may file, or cause to be filed, applications which will give him more than one chance on any tract in a simultaneous filing period, whether by written or oral agreement or contract.

(b) The filing fee may be paid by cash, certified check, cashier's check, money order, or personal check. A filing fee paid by personal check which is returned by the bank because of insufficient funds gives an applicant no priority and any lease or permit issued is void from its inception.

(c) An application may be withdrawn at any time before the drawing; however, if there are conflicting applications, the withdrawal does not correct the conflict unless the commissioner is satisfied that the conflict was unintentional or due to excusable inadvertence.

(d) Any application that fails to comply with the requirements of the notice must be rejected and gives the applicant no priority.

11 AAC 82.525. Drawings

(a) Whenever proper applications filed simultaneously or during any simultaneous filing period cover the same land, the commissioner will cause a public drawing or drawings to be held to determine the priorities among those applications, but the drawing is limited to three priorities when more than three applications are included in the same drawing. All remaining applications are rejected and closed of record following the drawing without further notice to the applicant. Each drawing will be conducted in the manner the commissioner determines.

(b) The order or other notice by the commissioner providing for simultaneous filing periods will give the date, time, and place of drawing to determine priorities.

11 AAC 82.530. Material to accompany applications

Noncompetitive applications must be accompanied by, or refer to, a previously filed statement of qualifications required by sec. 205 of this chapter.

11 AAC 82.535. Default

If the applicant first drawn for any tract fails to timely comply with the requirements of the law, regulation or the filing notice, the remaining priorities in the order drawn, successively will be given notice and opportunity to secure the lease.

11 AAC 82.540. Filing after simultaneous filing period If no applications are filed or if no lease or permit is issued as a result of a simultaneous filing period, the land becomes available on a first-come, first-served basis, but only after notation of its availability on the official records of the department.

Article 6 **Miscellaneous Leasing Procedure**

11 AAC 82.600. Bonding

(a) Every mineral lease and permit may contain a provision requiring that an acceptable bond in the minimum amount required by the section of this title dealing with the specific mineral involved be filed before beginning any permit or lease operation.

- (b) The amount of the bond is the amount determined by the commissioner to be justified by the nature of the surface, its uses and improvements in the vicinity of the lands, and the degree of the risks involved in the types of operations to be carried on under the lease or permit.
- (c) Every bond must be either
- (1) a corporate surety bond with a corporate surety qualified to do business as such in Alaska; or
 - (2) a personal bond accompanied by a deposit of cash in the amount of the bond, or negotiable federal or Alaska securities in a sum equal at par value to the amount of the bond together with a sufficient conveyance to the commissioner of full authority to sell the securities in the event of default in the performance of the conditions of the bond.
- (d) Every bond must be conditioned upon faithful compliance with all the provisions of the lease or permit.
- (e) The principal on any bond must be the lessee of record unless the lease is subject to an operating agreement which has been approved by the commissioner, in which case the operator may be the principal in place of the lessee of record.
- (f) Bonds must be furnished on forms provided by the department.

11 AAC 82.605. Assignments

- (a) Leases, oil and gas exploration licenses, permits, or interests in leases, oil and gas exploration licenses, or permits, may, with the approval of the commissioner, be assigned or subleased as provided in this section to a person or persons qualified to hold a lease.
- (b) No transfer of an interest in a lease, oil and gas exploration license, or permit, including assignments of working or royalty interest, operating agreements, and subleases, is binding upon the state unless approved by the commissioner. The transferor is liable for all obligations under the lease or oil and gas exploration license accruing before the approval of the transfer. When transfers of overriding royalty are made after the initial separation from the working interest of the lease, executed or image copies of these transfers must be transmitted to the department without charge for filing in the appropriate case file. However, the commissioner will take no action and official status records will not be posted to reflect these transfers.
- (c) The commissioner will approve a transfer of an undivided interest in a lease, oil and gas exploration license, or permit unless the commissioner makes a written finding that the transfer would adversely affect the interests of the state or the application does not comply with applicable regulations. The commissioner will state the reasons for denial of an application in the finding.
- (d) The commissioner will disapprove a transfer of a divided interest in a lease, oil and gas exploration license, or permit if the transfer covers only a portion of the lease, oil and gas exploration license, or permit or a separate and distinct zone or geological horizon, unless the transfer would not adversely affect the interests of the state, the transfer complies with applicable regulations, and the
- (1) applicant demonstrates to the commissioner's satisfaction that the proposed transfer of a divided interest is reasonably necessary to accomplish exploration of the area subject to an oil and gas exploration license and exploration or development of the lease or permit;
 - (2) lease is committed to a unit agreement approved by the commissioner;

- (3) lease is allocated production within a participating area approved by the commissioner; or
 - (4) lease or area subject to an oil and gas exploration license has an oil, gas, or geothermal well certified as capable of production in paying quantities.
- (e) The commissioner will make a written finding stating the reasons for disapproval of a transfer of a divided interest under (d) of this section.
- (f) When a corporate merger or consolidation occurs, transferring all of the interests of one corporation to another, the surviving or new corporation shall submit to the department
- (1) a signed, notarized statement by an officer of the surviving or new corporation describing the transfer of interests;
 - (2) a certificate of merger or certificate of consolidation issued by the State of Alaska, Department of Commerce;
 - (3) applications for approval of assignments transferring all interests to the surviving or new corporation, in compliance with [11 AAC 82.615](#);
 - (4) if not filed on a form provided by the department, the request for approval must contain the same information for each interest transferred as is required on the assignment application form;
 - (5) a filing fee is required for each affected lease or oil and gas exploration license; and
 - (6) the surviving or new corporation must comply with the statement of qualifications required by [11 AAC 82.205](#).

11 AAC 82.610. Permits or leases segregated by partial assignment

If a transfer is made of all or a part of the lessee's or permittee's working interest in a portion of the acreage in a lease or permit, the acreage as to which the transfer is made will, at the option of the commissioner, and may, upon the request of the transferee and with the approval of the commissioner, be segregated into a separate and distinct lease having the same effective date as the original lease or permit.

11 AAC 82.615. Application for approval of assignment

- (a) An application for approval of assignment or transfer must
- (1) be filed in triplicate and comply with [11 AAC 88.105](#);
 - (2) be filed within 90 days after the date of final signing of the transfer by the assignor; however, an assignment not filed within 90 days may be approved, at the discretion of the commissioner, where no intervening interest is filed;
 - (3) unless filed on forms provided by the department, be accompanied by a request for approval of assignment essentially like that used in the appropriate department form; and
 - (4) be accompanied by a bond, if required by the commissioner, which clearly binds the assignee and the assignee's surety to any unperformed obligations of the assignor.
- (b) If the transfer is solely an assignment by the lessee or licensee of a state-issued oil and gas exploration license of record of all or a divided or undivided portion of the record title to a lease or oil and gas exploration license, forms provided by the department or facsimile must be used.
- (c) Each application for approval of assignment must provide for the transfer of interest from a single assignor to

a single assignee. The department form may not be altered to provide for any type of multiple party assignments.

(d) If a single instrument affects two or more leases, oil and gas exploration licenses, or permits, the applicant shall file three signed counterparts of the instrument and sufficient exact image copies of it to provide one copy of each lease, oil and gas exploration license, or permit covered by the application. A separate filing fee is required for each lease, oil and gas exploration license, or permit affected.

(e) The assignee shall also file or refer to the current statement of qualifications required by [11 AAC 82.205](#).

(f) Ownership interests must be expressed in percentages with any fraction of a percent expressed in decimals with five or fewer digits to the right of the decimal point. All ownership percentages in the lease, when added, must total 100 percent.

(g) Filing fees will be assessed in accordance with [11 AAC 05.010](#) for each application for approval of assignments.

11 AAC 82.620. Transfer by death

If the applicant claims to be the heir or devisee of a deceased holder of a lease or permit or interest in it, he must furnish evidence satisfactory to the commissioner of his status and identity as an heir or devisee.

11 AAC 82.625. Effective date of assignments

If the commissioner approves or disapproves an application for transfer, the commissioner will mail notice of the action to the applicant and the lessee, licensee of a state-issued oil and gas exploration license, or permittee. If the commissioner approves the transfer, the effective date of the transfer is the first day of the month following the date on which the assignment application is filed with the state. Upon prior written request, the effective date of the transfer is the first day of the month in which the assignment application is filed with the state. If an assignment application is approved prior to issuance of the lease, oil and gas exploration license, or permit, the effective date of the transfer is the effective date of the lease, license, or permit.

11 AAC 82.630. Responsibility

(a) The assignor of a permit, oil and gas exploration license, or lease and the assignor's surety continue to be responsible for the performance of any obligation under the permit, oil and gas exploration license, or lease until the effective date of the assignment. If the transfer is not approved, their obligation continues as though no transfer had been filed for approval.

(b) After the effective date of the transfer, the assignee and the assignee's surety are responsible for the performance of all permit, oil and gas exploration license, or lease obligations notwithstanding any terms in the transfer to the contrary.

11 AAC 82.635. Surrenders

(a) All of the rights in land held under a lease, oil and gas exploration license, or prospecting permit may be surrendered by the lessee, licensee, or permittee of record by filing a written surrender at the appropriate office of the department. A surrender of a legal subdivision of the land held under a lease, oil and gas exploration license, or prospecting permit, or of a separate and distinct zone or geological horizon in all or a portion of the land, is not effective unless approved by the commissioner.

(b) A surrender takes effect on the date it is filed, or on the date of approval if approval is required, subject in either case to the continued obligation of the lessee, licensee, or permittee and the surety to make payment of all accrued royalties and rentals and to place the surrendered land in condition satisfactory to the commissioner for abandonment.

(c) A surrender must be filed in accordance with [11 AAC 88.105](#), but a filing fee is not required.

11 AAC 82.640. Survey requirement

(a) A survey or monumentation of lease boundaries may be required by the commissioner when he determines that survey or monumentation is necessary to determine compliance with the lease or to determine the extent of possible damage to adjacent lands from lease operations. However, the lessee is not required to pay the costs of a survey in excess of that required to establish that its operations are in compliance with the terms of the lease.

(b) Within one year after notice of the survey or monumentation requirement, the lease holder shall provide the commissioner with a plat of survey or other evidence showing that the survey or monumentation has been completed in accordance with the notice.

11 AAC 82.645. Conforming protracted description to official surveys

(a) If a lease is issued describing land according to a protracted survey and if thereafter the leased land is surveyed under the public land rectangular system, the boundaries of the lease land are those established by the latter survey when it is approved by the commissioner. Before conforming the lease boundaries, the department will notify each lessee of land affected by the survey and permit those lessees to examine the plat of survey and the field notes. If such a lessee believes that the survey is erroneous and would because of an error move any boundary of a lease held by him more than 10 feet, or in the case of an oil and gas lease on which there is no well capable of producing in paying quantities, one-quarter of a mile, then he may, within 30 days after that notice, file with the department written objections to the survey specifying in detail the error alleged, the boundary affected and the effect on it, and stating whether a hearing is demanded.

(b) If a hearing is demanded under (a) of this section, the commissioner will establish a time and place for the hearing and mail reasonable notice of it to all lessees of record affected by the survey.

(c) The commissioner will consider all written objections and all evidence presented at the hearing, and if he finds that any lease boundary, as established by the lessee, would be affected in excess of the limits specified in (a) of this section, and he finds reasonable cause to believe that the effect may be the result of an error in the survey, whether or not within the allowable limits of error according to the generally accepted standards of surveying, and any lessee or lessees agree to bear the cost of a resurvey as provided for in (d) of this section, the survey is not approved and the commissioner will order a resurvey.

(d) A resurvey ordered under (c) of this section must be made by an independent professional land surveyor licensed in Alaska and appointed by the commissioner, who will consult with any interested lessees before making the appointment. The commissioner will fully apprise the surveyor of any alleged errors and furnish him copies of all

written objections and other evidence submitted concerning the original survey.

(e) Upon receipt of the resurvey, the commissioner will notify all affected lessees of it and permit the lessees to examine the plat of resurvey and the field notes. A lessee may within 30 days after receipt of the notice file written objections in the manner provided in (a) of this section. If objections are received, the commissioner may, at his discretion, order a further hearing or a further resurvey in the manner provided in (d) of this section.

11 AAC 82.650. Control

(a) The physical location of the boundaries of any legal subdivision subject to a lease describing land according to a protracted survey, is, for the purposes of sec. 645 of this chapter, controlled by the latitudes and longitudes indicated on the protracted survey, if no portion of the protracted survey has been surveyed by the department or by the Bureau of Land Management, Department of the Interior, under the public land rectangular system. If a portion has been surveyed by the department or the Bureau of Land Management, that survey applies. When locating the unsurveyed remainder of a section of land, a projection of the section lines from the surveyed portion as monumented under the public rectangular system to the first protracted section corner position determines the remainder of the surveyed section. If the first protracted section corner position can be closed into by the public land rectangular survey system within the accuracies and standards established by the Bureau of Land Management's 1947 Manual of Surveying Instructions and in accordance with the department's survey requirements, the protracted corner becomes a common corner for description purposes. Otherwise the surveyed section of land is closed into the protracted section line position as defined by protracted data.

(b) The boundaries of leases issued before July 22, 1979 will be controlled by this section upon approval of the commissioner with the consent of the lessees of record.

11 AAC 82.655. Rule of approximation

The "rule of approximation" as defined in [AS 38.05.965](#) shall be used in determining if a lease or permit complies with the area requirements of [AS 38.05](#).

11 AAC 82.660. Excess area; partial termination

If for any reason a permit or lease covers more acreage than the maximum permitted by [AS 38.05](#) or the regulations to be included in one lease or permit of its kind, the lease or permit is not void, but the acreage covered must be reduced to the permitted maximum. Whenever the commissioner determines that a lease exceeds the permitted acreage, he will promptly mail notice to the lessee or permittee, stating the amount of acreage that must be eliminated. Within 60 days after the receipt of the notice, the lessee or permittee of record may file an instrument surrendering or assigning in full at least the amount of acreage that must be eliminated which must be one or more legal subdivisions or in such other shape or shapes as the commissioner approves. The surrender or assignment is effective when filed. If the surrender or assignment is not filed within 60 days, the commissioner will eliminate the minimum necessary and promptly mail notice to the lessee or permittee, specifying the parcels eliminated.

11 AAC 82.665. Rental and royalty relief

(a) Application for relief under [AS 38.05.140](#) must comply with [11 AAC 88.105](#) and

- (1) state all the facts entitling the applicant to relief;
- (2) state location and status of all past and present activities on the lease;
- (3) include a detailed report of all production during the six months preceding the filing of the application;
- (4) contain a detailed statement covering the entire life of the lease showing all expenses and costs of operating the lease including all royalties and overriding royalties and all income from all produced minerals from the lease; and
- (5) include an agreement by the applicant to defray the cost of publishing a notice as provided in (b) of this section.

(b) Upon receipt of an application complying with (a) of this section, the commissioner will cause to be published a notice of public hearing if required on the application. The notice must

- (1) state the time and place of hearing;
- (2) describe the lands involved; and
- (3) state the name of the applicant and the nature of the relief applied for.

(c) The notice must be published at least once a week for at least two consecutive weeks in advance of the hearing date, which must be at least 15 days after the last date of publication, in at least one newspaper of general circulation in the vicinity of the principal office of the department, and must be posted at that office for the same period.

(d) At the time and place specified in the published notice, the commissioner will hear evidence offered by the applicant and any other interested party.

(e) The commissioner must give notice of the findings and determination to the lessee and to any other person who has filed a written request for it. The action taken is effective on the date specified in the notice.

11 AAC 82.670. Suspension of production or operations

(a) Applications for suspension of production or operations under [AS 38.05.140](#) must comply with [11 AAC 88.105](#) and must contain complete information showing the necessity or justification for the suspension.

(b) Whenever the commissioner takes an action under [AS 38.05.140](#), he will give notice to the lessee, specifying the action taken, the effective date of it, and the duration of any suspension, and note the action in the status record.

(c) No lease expires because operations or production or both are suspended under any order or with the assent of the commissioner.

11 AAC 82.675. Effective date of leases, oil and gas exploration licenses, and permits

The effective date of a lease, oil and gas exploration license, or permit is the first day of the month following the date on which the lease, oil and gas exploration license, or permit was signed on behalf of the state or, upon prior written request, on the first day of the month in which it was signed on behalf of the state.

Article 7

Royalty Products

11 AAC 82.700. Taking royalty in-kind for royalty products other than oil, gas, or associated substances

Royalty products other than oil, gas, or associated substances taken in-kind as provided by [AS 38.05.182](#) must be taken under the provision of the lease which reserves the royalty to the state. If no such provision is in the lease or in the regulations dealing with the products to be taken, 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; however, if the portion of the state's share to be taken in-kind exceeds 50 percent of the state's share, 180 days notice will be given;

(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) from 10 percent to 50 percent, upon 90 days written notice; and

(C) more than 50 percent, upon 180 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.

11 AAC 82.705. Bidding method for royalty products other than oil, gas, or associated substances

Royalty products, other than oil, gas, or associated substances, that the commissioner determines are to be sold by competitive bid will be offered for sale by sealed bid or at public auction.

11 AAC 82.710. Notice of sale for royalty products other than oil, gas, or associated substances

If the commissioner determines that royalty products other than oil, gas, or associated substances will be offered for competitive sale, notice of the sale will be given as provided by [AS 38.05.945](#). The notice must specify all the terms and conditions of the sale including the royalty products to be sold, bidding method, bond requirements, sale place and time, minimum bid, if prescribed, and any other term or condition that the commissioner determines necessary to carry out the purposes of [AS 38.05.183](#).

11 AAC 82.715. Qualifications for royalty products other than oil, gas, or associated substances

A purchaser of the state royalty products other than oil, gas, or associated substances must comply with the qualification requirements of [11 AAC 82.200](#) and must supply the showing of qualification required of mineral permittees and lessees by [11 AAC 82.205](#).

Article 8

Records and Reports

11 AAC 82.800. Production records

(a) Mineral lessees of state land shall keep in their possession accurate books and records showing the production and disposition of all minerals produced from the leased land and shall permit the commissioner or his agents at all reasonable hours to examine them.

(b) The commissioner will, in his discretion, require copies of sales contracts and other agreements with the first bona fide purchaser affecting produced minerals which are subject to royalties.

11 AAC 82.805. Test results

The lessee of a state-issued mineral lease and the licensee of a state-issued oil and gas exploration license shall furnish, upon request of the commissioner, a copy of all geological, geophysical, engineering, and other factual data obtained from the lease or oil and gas exploration license, including all pertinent tests, records, surveys, and analyses conducted on or pertaining to the leased or licensed land or products from it, but not including interpretations of these items or proprietary research data or techniques.

11 AAC 82.810. Confidentiality of data

(a) Geological, geophysical, and engineering data, including well and bore hole data, and interpretations of those data, will be kept confidential at the written request of the person supplying the information. Cost data and financial information submitted in support of applications, bonds, leases, and similar items will be kept confidential at the written request of the person supplying the information except as provided in [AS 38.05.036](#).

(b) Information for which confidentiality is requested must be identified as "confidential" on the outer envelope and on each page, and must be submitted separately from information not entitled to confidential status.

11 AAC 82.815. Cross-referencing

A party who is required to submit information to the commissioner under this title may cross-reference information which it or other parties, including agencies of state or federal government, have previously filed with the commissioner. A party making a cross-reference shall precisely identify the referenced information, the approximate date, and the office with which it was filed. If the information cannot be located in the departmental files, or if inaccessibility of the information would delay processing of the application, the commissioner will, in his discretion, require that the information be submitted.

Article 9

Exploration Licensing Omitted; Oil & Gas Regulation

Mining Rights
Administrative Regulations
Chapter 86

Article 4
Upland Mining Leases

11 AAC 86.300. Preference right by leasehold location

The preference right to a lease that is acquired by establishing and maintaining a leasehold location remains in existence until a lease is issued, the leasehold location is adjudicated and found invalid, or the leasehold location is abandoned.

11 AAC 86.305. Applications for lease

(a) When the division receives a copy of a certificate of location for a location on state land that is restricted to mining under lease, the division will notify the locator of the leasing requirement.

(b) The division will publish the notice required by [AS 38.05.205](#)(a) and subsequently mail a lease application form to the locator only when

- (1) the division learns that the locator is ready to begin production or, if authorized by sec. 5, ch. 108, SLA 1981, as amended by sec. 1, ch. 90, SLA 1985, the locator is already producing;
- (2) the locator requests a lease application form; or
- (3) the locator of a mining claim requests a lease application form.

(c) The lease application submitted by a person described in (b) of this section must include a sworn affidavit stating, for each mining claim or leasehold location,

- (1) that discovery, location, and filing were performed as required by law;
- (2) the type and nature of the mineral discovery; and
- (3) the position of the discovery in relation to the northeast corner of the location.

(d) The division will reject a lease application and the location will be void if the director determines, after a review of all documents that are filed, a field examination, or analysis of other information, that

- (1) the requirements of [AS 38.05.185](#) - 38.05.275 have not been met;
- (2) the land was not open to location when the mining claim or leasehold location was made; or
- (3) the land is closed to mining.

(e) The division will reject a lease application received

- (1) for a location on state-selected land that has not been conveyed to the state by the federal government; and
- (2) for other land to which the state does not hold title to the locatable mineral estate.

(f) The director will send by certified mail a copy of the notice described in (b) of this section to the holders of apparent conflicting rights as shown on state land records. Any assertion of conflicting rights must be received by the director within 30 days of the date of the notice unless the director authorizes an extension of time. The assertion of conflicting rights must be in writing and must describe:

- (1) the conflicting rights asserted; and
- (2) any factual or legal basis for, and documents in support of, the conflicting rights.

(g) If conflicting rights are asserted by another locator and the director decides not to adjudicate the conflict, the division will reject the lease application and advise the

parties to resolve the conflict. A person may file a new lease application after the conflict between the parties has been resolved.

(h) The division may not adjudicate a lease application that does not meet the requirements of this section, or that otherwise deviates from the form provided by the division. The division will return the application to the applicant with an explanation of the reason for its return. A new lease application may be filed later.

11 AAC 86.308. Rental Repealed 5/18/90.

11 AAC 86.309. Showing of discovery

(a) The director will, in his or her discretion, at any time, require a showing of discovery for each mining claim or leasehold location included within a leasehold or listed in a lease application.

(b) The showing of discovery required of a lessee must relate to the discovery originally sworn to in the application for a lease. However, the showing may be supported with subsequently acquired data.

(c) The statement of discovery sworn to in a lease application is not confidential, but any supplemental geological, geophysical, or engineering data supplied in support of a showing of discovery will, upon the lessee's request, be kept confidential by the state and by any agents or experts consulted or retained by the state to assist in the determination of the existence of a discovery.

(d) A mining claim or leasehold location determined by the director to lack a discovery is void and will be excluded or removed from the leasehold or the lease application.

11 AAC 86.310. Bond Repealed 5/30/85.

11 AAC 86.311. Survey of exterior boundary

(a) Unless otherwise specified by the director, within 10 years after the effective date of the lease, the exterior boundary of the leasehold must be surveyed in accordance with [11 AAC 53](#) and instructions issued by the department.

(b) Repealed 1/19/2002.

11 AAC 86.312. Lease duration

A lease will be issued for a term of 20 years, subject to renewal as provided in [AS 38.05.205](#)(c). However, the director will, in his or her discretion, set a different term if justified on the basis of the expected mine life.

11 AAC 86.313. Annual rental

(a) The provisions of this section apply to rental payments for mining leases other than for leases under [AS 38.05.250](#).

(b) A rental payment for a mining lease must be made in accordance with [11 AAC 86.107](#) and must be accompanied by a rental form provided by the department, a photocopy of that form, or a form approved by the director. The form must contain the name and address of the owner of record and the ADL number of the mining lease.

(c) The annual rental amount is based on the number of acres included in the lease and the number of years since the predecessor claim or leasehold location of the mining lease was first located, as follows: Number of Years Since Rental Amount Per Acre First Located For Mining Lease 0-5 \$.88 6-10 \$ 1.75 11 or more \$ 4.25 Before survey under [11 AAC 86.311](#), the rent will be based on the number of acres estimated in the lease document.

- (d) If a mining lease contains more than one claim or leasehold location, the predecessor claim or leasehold location for determining the rental amount is the claim or leasehold location that was located first.
- (e) For purposes of determining the amount of annual rental, a claim or leasehold location located on state land on or before August 31, 1989, is considered to have been first located on August 31, 1989, and the first rental year for such a claim or leasehold location is considered to have begun at noon on September 1, 1989. The first rental year for a claim or leasehold location located on or after September 1, 1989, begins on the date of posting location and ends at noon on the following September 1.
- (f) The first annual rental payment for a mining lease that becomes effective after August 31, 1989 will be applied to the period from the effective date of the lease to the next September 1.
- (g) A rental payment that was paid for a predecessor mining claim or leasehold location during the rental year in which a lease is issued will be credited toward the first annual rental payment under the lease.
- (h) The rental payment for each subsequent rental year is due on September 1 and must be paid on or before November 30.
- (i) If the lessee fails in whole or in part to make a timely rental payment, the mining lease will be considered in default and the department will supply the lessee a deficiency notice in accordance with [11 AAC 86.108](#), describing the lease in default by the lease's ADL number. In the notice, the department will advise the lessee that the lease will be terminated without further notice if the department does not receive the required payment in full within 30 days after the lessee's receipt of the notice.

11 AAC 86.314. Annual labor

The annual labor requirements set out in [11 AAC 86.220](#) apply to a lease. If a lease includes multiple MTRSC locations, or a combination of traditional locations and MTRSC locations, the annual labor rate will be computed by the acreage method under [AS 38.05.210\(a\)\(3\)](#).

11 AAC 86.315. Termination Repealed 5/30/85.

11 AAC 86.320. Relinquishment Repealed 5/30/85.

11 AAC 86.321. Surrender

Unless otherwise specified by the director, [11 AAC 82.635](#) applies to the surrender or relinquishment of an upland mining lease.

11 AAC 86.325. Transfers Repealed 5/30/85.

11 AAC 86.350. Termination of lease and reissuance
No Information Available for this Regulation

Article 5: Prospecting Sites

(See Section I: Mining Rights on Public Land)

Article 6

Offshore Permits and Leases

11 AAC 86.500. Permit applications

(a) The procedures of [11 AAC 82.105](#), [11 AAC 82.110](#), [11 AAC 82.200](#), [11 AAC 82.205](#), [11 AAC 82.300](#), [11 AAC 82.305](#), and [11 AAC 82.500](#) - [11 AAC 82.540](#) apply to offshore prospecting permits.

(b) An applicant may file for and be granted an offshore prospecting permit only on tide and submerged land that has been opened for offshore prospecting permits.

(c) Notwithstanding (a) and (b) of this section and [11 AAC 86.565](#), all prospecting permit applications pending as of January 2, 1983, will be adjudicated without regard to whether the area applied for was open to filing at the time of application. This action is intended to preserve priority rights established by the applications' order of filing. The commissioner is exercising his authority under [AS 38.05.020](#) and [AS 38.05.035\(b\)\(2\)](#) to grant and preserve these priority rights in order to avoid inequitable detriment to diligent applicants due to situations over which the applicants had no control. The commissioner finds that this exercise of this authority under [AS 38.05.035\(b\)\(2\)](#) is in the best interests of the state.

(d) No person may file offshore prospecting permit applications that exceed, in the aggregate or in combination with offshore prospecting permits already held by that person, 300,000 acres.

(e) Notwithstanding (d) of this section, any person who, as of January 2, 1983, has pending prospecting permit applications that exceed 100,000 acres, shall, within 24 months after January 1, 1983, reduce the acreage under prospecting permit application to 300,000 acres or less. The department will adjudicate and issue up to 100,000 acres of offshore prospecting permits according to a priority list established by the applicant to the extent administratively practicable. If excess applications are not relinquished, adjudication of pending applications will take place in an order determined by the department.

(f) All tide and submerged land will be opened for offshore prospecting permit applications on June 30, 1984, unless the department finds that

- (1) the land contains known mineral deposits that will be offered by competitive leasing;
- (2) mining would be incompatible with significant surface uses; or
- (3) adequate funding has not been appropriated for disposal of these minerals under the procedures provided by law.

(g) Issuance of an offshore prospecting permit is subject to requirements of [AS 38.05.035\(e\)](#), [38.05.830](#), [38.05.945](#), and [38.05.946](#).

(h) The filing of an application for an offshore prospecting permit does not vest a property right but merely creates a priority right to any permit that may be issued. The filing of an application segregates the locatable minerals in that tract. Until the application is adjudicated, those minerals are unavailable for location under [AS 38.05.185](#) - [38.05.275](#). Prospecting permit applications filed will be shown as soon as possible on the department's land records and will immediately be entered on a list available by mail from the division.

(i) In deciding whether to approve an offshore prospecting permit, the director will prepare a written finding that considers the following:

- (1) property descriptions and locations;
- (2) the mineral potential of the application area, in general terms;
- (3) fish and wildlife species and their habitats in the application area;
- (4) the current and projected uses in the application area, including uses and value of fish and wildlife;

- (5) the governmental powers to regulate mineral exploration, development, production, and transportation;
- (6) the reasonably foreseeable cumulative effects of mineral exploration, development, production, and transportation on the application area, including effects on subsistence uses, fish and wildlife habitat and populations and their uses, and historic and cultural resources;
- (7) permit and lease stipulations and mitigation measures, including any measures to prevent and mitigate releases of metal and hazardous substances, to be included in the permit or lease, and a discussion of the protections offered by these measures;
- (8) the method or methods most likely to be used to mine the application area, and the advantages, disadvantages, and relative risks of each;
- (9) the reasonably foreseeable fiscal effects of the offshore prospecting permit and the subsequent activity on the state and affected municipalities and communities, including the explicit and implicit subsidies associated with the lease sale, if any;
- (10) the reasonably foreseeable effects of mineral exploration, development, production, and transportation on municipalities and communities within or adjacent to the application area; and
- (11) other factors considered relevant by the director.

11 AAC 86.505. Effective date

The effective date of a permit or lease is as provided by 11 AAC 82.675.

11 AAC 86.510. Acceptable permit work

Only expenditures and labor on land covered by the permit or permits, which in the opinion of the commissioner develop or benefit the permits, are acceptable. The work must add to the knowledge of mineral deposits within the limits of the permit or permits or must directly facilitate the acquisition of such information. Creditable work may include, but is not limited to, sampling and geological and geophysical surveys. General economic and feasibility studies, and work such as roads and other structures on adjacent upland, are not acceptable unless considered reasonably necessary by the commissioner for the development of the permit or group of permits. Work done in excess of minimum requirements in one year may be credited during the following two years.

11 AAC 86.515. Compliance with permit rental requirement

(a) On or before the second and each subsequent anniversary date of the offshore prospecting permit, the permittee shall pay rental, submit an affidavit of work creditable against the rental, or submit a combination of a partial rental payment and an affidavit of work creditable against rental, in the amount due. The affidavit of work must be filed with the department. The signing of the affidavit constitutes certification that, to the knowledge of the permittee, the work, or that portion of work claimed as an excess from a previous year, has not been previously credited to any rental or work requirement.

(b) The affidavit must be supported by substantiating evidence, as might be required by the commissioner. The affidavit must set out fully

- (1) the location of the work performed;
- (2) the nature, extent and cost of the work;

- (3) the general findings from the work; and
- (4) the name, address, and professional background of each person conducting the work.

(c) Failure to timely submit a rental payment or affidavit of work for an offshore prospecting permit is an abandonment under AS 38.05.265 and automatically terminates the offshore prospecting permit without prior notice.

(d) If any rental payment in combination with any work creditable against rental is less than the amount due, the permittee will be granted 30 days after receipt of a notice from the director to submit the additional rental due. If the permittee does not correct the default within the time allowed in the notice, the offshore prospecting permit automatically terminates without further notice.

11 AAC 86.520. Grouping of permits

Contiguous permits may be grouped for work requirement purposes if it is shown to the satisfaction of the commissioner on or before the time provided in 11 AAC 86.515 that the permits are and were held under common ownership or assignment. For purposes of grouping permits, work affidavits must be filed on a group basis and in accordance with 11 AAC 86.515.

11 AAC 86.525. Failure to comply Repealed 5/30/85.

11 AAC 86.528. Permit extension

An offshore prospecting permit will not be extended or renewed.

11 AAC 86.530. Conversion of an offshore prospecting permit to a mining lease

(a) At any time while an offshore prospecting permit is in effect, the permittee is entitled to a noncompetitive mining lease on that part of the permit area that has been shown to the satisfaction of the director to contain workable mineral deposits. The leased land will be described by legal subdivision according to the official survey or to the official protraction diagram approved by the Bureau of Land Management or the Department of Natural Resources.

(b) An application to convert a permit to a noncompetitive mining lease must be filed in accordance with 11 AAC 88.105. If the application is filed before the permit expires, the permit's expiration is postponed while the application is being processed. Until processing is completed, the permittee retains all rights specified in the permit until otherwise notified by the department, and the locatable minerals in the land described in the conversion application remain segregated from filing under other offshore prospecting permit applications or as mining locations. There is no further rental obligation after the original expiration date. A decision denying conversion to a lease will be accompanied by a written explanation of the grounds for the denial.

(c) A permittee applying to convert the permit to an offshore mining lease has the burden of demonstrating to the director's satisfaction that each of the requirements for the issuance of a lease has been met, and shall provide sufficiently reliable and detailed economic, geophysical, geologic, and engineering data to enable the director to make a knowledgeable decision. The following information must be submitted in support of the lease application:

- (1) an estimate of reserves, including a statement of whether these reserves are measured, indicated, or inferred, together with sufficient geologic, geophysical,

and engineering data to substantiate the reserve estimates;

(2) the average grade of recoverable reserves, including a discussion of the sample density, sample collection technique, sample preparation, and analytical testing methods;

(3) topographic, geologic, or ocean floor maps that clearly show the location of all samples, trenches, drill holes, and geophysical surveys, and the outline of the ore body;

(4) a description of the probable mining and recovery methods;

(5) an economic appraisal of the proposed mining operation that estimates both the revenue from the sale of the ore and the costs of mine development and of extracting, milling, transporting, and marketing the ore;

(6) an evaluation of toxic materials that naturally occur in the proposed mining area and proposed methods to control the release of those materials;

(7) any additional documentation required by the director to assist in evaluating the conversion of a prospecting permit to a lease.

(d) Any financial information and geological, geophysical, engineering, and cost data supplied by the applicant as part of the application will be kept confidential at the applicant's request. Such data must be clearly identified by the applicant and separated from information not qualifying as confidential.

(e) In this section, "**workable mineral deposit**" means a locatable mineral deposit that has been shown by the applicant to have a reasonable prospect of developing into a successful mine, based on the presence of one or more locatable minerals of sufficient value and quantity to induce a prudent operator to pursue development under present conditions.

11 AAC 86.532. Duration of "grandfather rights" leases

When an offshore lease that was issued before 1982 is renewed, the term of the new lease will be 10 years, subject to extension as provided in [AS 38.05.250](#).

11 AAC 86.535. Survey

The provisions of [11 AAC 82.640](#) - [11 AAC 82.650](#) apply to offshore mining leases.

11 AAC 86.540. Lease rental Repealed 5/18/90.

11 AAC 86.541. Offshore mining lease rental

(a) A rental payment for a tide or submerged land mining lease must be made in accordance with [11 AAC 86.107](#). Each payment must be accompanied by a rental form provided by the department, a photocopy of that form, or a rental form approved by the director. The rental form must contain the name and address of the owner of record and the ADL number of the lease. The department will, in its discretion, refuse to accept a payment submitted without the required information.

(b) The amount of the annual rental payment is \$.88 per acre during the first five years of the lease, \$1.75 per acre during the next five years of the lease, and \$4.25 per acre after that. Payments made for an offshore prospecting permit will not be applied against the rent that becomes due after the permit is converted to a lease.

(c) The first rental year for a tide or submerged land mining lease that was issued on or before August 31, 1989 began

at noon on September 1, 1989 and payment for that rental year must be made on or before June 29, 1990. The rental payment for each subsequent rental year is due on September 1 and must be paid on or before November 30.

(d) The first annual rental payment for a tide or submerged land mining lease issued after August 31, 1989 must be paid within 90 days after the effective date of the lease and will be applied to the period from the effective date of the lease to the following September 1. The rental payment for each subsequent rental year is due on September 1 and must be paid on or before November 30.

(e) If the lessee fails to make a timely rental payment, the lease will be considered abandoned under [AS 38.05.265](#). If a rental payment is timely submitted to the department, but the director determines that the payment is less than the amount due, the lessee will be granted 30 days after a deficiency notice is delivered under [11 AAC 86.108](#) to submit the additional rental due. The deficiency notice will specify the ADL number of the lease that will be considered abandoned without further notice if full payment is not received within the 30-day period.

11 AAC 86.545. Leases granted by competitive bidding

If the director offers tide and submerged lands containing known deposits of locatable minerals for lease, leases will be granted under the competitive bidding procedures of [11 AAC 82.400](#) - [11 AAC 82.475](#). Known deposits of locatable minerals are those determined by the director, after reviewing public information, to exist in sufficient quantity and quality to induce further development towards production of minerals for sale.

11 AAC 86.550. Bond Repealed 5/30/85.

11 AAC 86.555. Termination Repealed 5/30/85.

11 AAC 86.560. Relinquishment Repealed 5/30/85.

11 AAC 86.561. Surrender [11 AAC 82.635](#)

Applies to the surrender or relinquishment of an offshore prospecting permit or offshore mining lease.

11 AAC 86.565. Land in terminated permits and leases

The procedures of [11 AAC 82.500](#) - [11 AAC 82.540](#) pertaining to land in terminated permits and leases are applicable to land on which permits or leases under this chapter have terminated unless the land has been classified for competitive leasing.

11 AAC 86.570. Transfers Repealed 5/30/85.

11 AAC 86.575. Production and lease extension

(a) To qualify for extension of an offshore mining lease for so long as production continues, production must be achieved by the end of the lease's stated term.

(b) Under the circumstances set out in [AS 38.05.250\(d\)](#), the lessee may apply for a short-term extension of a lease that is not yet in production.

11 AAC 86.580. Suspension

(a) An application for a suspension of operations and production under a lease must comply with [11 AAC 88.105](#) and must contain complete information showing the necessity or justification for the suspension.

(b) No lease expires because production or operations leading to production are suspended by order of or with the assent of the department. When a suspension is

removed, the lessee will have a reasonable time, which will not be less than six months, to resume operations or production.

Article 7: Millsites

See Section I

Article 8: Mining Production Licenses (Repealed)

Article 9: Mining Production Royalty

See Section VI

Article 10

General Prospecting Permit and Lease Provisions

11 AAC 86.800. Plan of operations

(a) A plan of operations that describes the activities proposed to take place under an upland mining lease, offshore prospecting permit, or offshore mining lease must be submitted to and approved by the director before activities may occur under the prospecting permit or lease. An approved plan of operations takes the place of the land use permit or miscellaneous land use permit that would be required under this title for unleased land. If proposed lease or permit activities are so minor that they could take place without a land use permit on unleased land, a plan of operations is not required.

(b) The plan must show how the operator proposes to comply with performance standards, stipulations, or conditions applicable to the prospecting permit or lease. The proposed plan of operations must address the areas to be mined, location and design of settling ponds, tailings disposal, overburden storage, permanent or temporary diversions of water, access routes, reclamation plans, and other actions necessary to conduct the operation. The plan must include statements and maps or drawings setting out the following, as applicable:

- (1) the sequence, schedule, and duration of the proposed operations;
- (2) size and purpose of the operations;
- (3) number of pieces of equipment and people working on the project;
- (4) amount of material to be handled, processed, or removed, and how the material will be processed;
- (5) method of tailings disposal;
- (6) area of timber to be cleared, amount to be used, and clearing methods;
- (7) overland access routes to be used, and whether new roads, landing strips, or other new transportation facilities will be needed;
- (8) reclamation that will be carried out, including a timetable for each step in the reclamation, an estimate of the cost, and a description of the measures to ensure that all debris is disposed of in a sound manner;
- (9) the actions to be taken to avoid or minimize detrimental effects on fish and wildlife and their habitats;
- (10) amount and source of water to be used;
- (11) location and size of camp facilities;
- (12) any site the operator wants the division to close to public access in order to protect public safety or to prevent unreasonable interference with the rights of the operator;
- (13) how the operator's plans for compliance with other applicable laws and regulations, including size and location of required facilities or improvements, will affect resources under the jurisdiction of the department; and
- (14) any additional information required by the director to assist in evaluating the proposed plan of operations.

(c) Any geological, geophysical, or engineering data supplied by the applicant as part of the plan of operations will be kept confidential at the applicant's request. Confidential data must be clearly identified by the applicant and separated from information not qualifying as confidential.

(d) The plan of operations may cover up to a ten-year period. If the approved work is not completed before the end of the stated period, the director will, in his or her discretion, allow an extension rather than requiring a new plan to be filed. An amendment must be filed for approval if the operator wants to deviate significantly from the approved plan. If the time period the operator chooses to cover in the plan is less than the intended life of the mine, the plan must show how the proposed operations relate to subsequent operations.

(e) The plan must be submitted to the department at least 50 days before operations under the prospecting permit or lease are proposed to begin. Before operations may begin, the plan must be approved in writing by the division after consulting with the Department of Fish and Game, Department of Environmental Conservation, and other affected agencies.

(f) For the operator's convenience, the proposed plan may include information needed to apply for approvals from other departments or local and federal agencies under other applicable laws and regulations, such as effects of the operation on air and water quality, disposal of toxic wastes, effects on navigation, and effects on anadromous fish habitat.

11 AAC 86.805. Bond

(a) [11 AAC 82.600](#) applies to offshore prospecting permits, offshore mining leases, and upland mining leases. If a bond is required, the applicant, permittee, or lessee will be given notice of the requirement and its effective date. At least 30 days will be allowed to provide the bond.

(b) The director will, in his or her discretion, if a significant change in the scope of operations occurs, or before approving an assignment, alter the amount of the bond.

(c) A bond provided under this section will be released upon the following conditions:

- (1) the expiration or relinquishment of the lease or prospecting permit; and
- (2) the reclamation of the lease area or prospecting permit area as set out and approved in the plan of operations.

11 AAC 86.810. Suspension and termination

If the permittee or lessee fails to comply with applicable statutes and regulations, or to comply with the provisions of the prospecting permit or lease (except for failure to pay rental, which results in termination under [AS 38.05.265](#)), and the failure continues for 30 days after service of written notice and an opportunity to be heard, the director will, in his or her discretion,

- (1) suspend production or operations leading to production until compliance is achieved, during which the obligation to pay rental continues, or
- (2) terminate the permit or lease.

11 AAC 86.815. Transfers

An offshore prospecting permit, offshore mining lease, or upland mining lease may be transferred in accordance with [11 AAC 82.605](#) - [11 AAC 82.630](#).

Section IV: Mining Reclamation

Title 27. Mining

Chapter 27.19 RECLAMATION

Sec. 27.19.010. Administration; applicability.

- (a) The commissioner of natural resources shall implement this chapter.
- (b) This chapter applies to state, federal, municipal, and private land and water subject to mining operations.
- (c) Except as provided in [AS 27.19.040\(b\)](#), this chapter does not apply to an activity regulated under [AS 27.21](#).
- (d) This chapter does not alter or diminish the authority of another state agency, a state corporation, the University of Alaska, or a municipality under its laws and regulations.
- (e) The owner of private land may establish requirements for reclamation in excess of those established by this chapter.
- (f) The commissioner may not require a miner to reclaim under this chapter that portion of a previously mined area that was a part of a mining operation activity occurring before October 15, 1991.

Sec. 27.19.020. Reclamation standard.

A mining operation shall be conducted in a manner that prevents unnecessary and undue degradation of land and water resources, and the mining operation shall be reclaimed as contemporaneously as practicable with the mining operation to leave the site in a stable condition.

Sec. 27.19.030. Reclamation plan.

- (a) Except as provided in [AS 27.19.050](#), a miner may not engage in a mining operation until the commissioner has approved a reclamation plan for the mining operation.
- (b) In reviewing a reclamation plan for state, federal, or municipal land under (a) of this section, the commissioner may consider, after consultation with the commissioners of environmental conservation and fish and game and with the concurrence of the miner and landowner, uses to which the land may be put after mining has been completed, including trails, lakes, recreation sites, fish and wildlife enhancement, commercial, and agriculture uses.

Sec. 27.19.040. Reclamation financial assurance.

- (a) The commissioner shall require an individual financial assurance in an amount not to exceed an amount reasonably necessary to ensure the faithful performance of the requirements of the approved reclamation plan. The commissioner shall establish the amount of the financial assurance to reflect the reasonable and probable costs of reclamation. The assurance amount may not exceed \$750 for each acre of mined area, except that the \$750 an acre limitation does not apply to the assurance amount required for a lode mine.
- (b) The commissioner shall establish a statewide bonding pool for mining operations as an alternative to individual financial assurance. The commissioner may determine which mining operations are eligible to participate in the bonding pool based on the projected cost of reclamation in relation to the size of the bonding pool; however, a mining operation may not be allowed to participate in the bonding pool if the mining operation will chemically process ore or has the potential to generate acid. A miner participating in the bonding pool shall contribute an initial deposit not to exceed 15 percent of the financial assurance amount plus an additional nonrefundable annual fee not to exceed five percent of the financial assurance amount. The commissioner shall refund the 15 percent deposit upon satisfactory completion of the approved reclamation plan. If requested by the miner, the commissioner may apply the deposit to a new reclamation plan. In addition to its use for mining operations under this chapter, the commissioner shall allow the bonding pool to be used to meet the requirements of [AS 27.21.160](#). Income and other earnings on the bonding pool shall be added to the bonding pool.
- (c) If the commissioner determines that a miner has violated or permitted a violation of the approved reclamation plan and has failed to comply with a lawful order of the commissioner, the commissioner shall forfeit the financial assurance and deposit it in the statewide bonding pool. The commissioner shall use the reclamation and administrative costs recovered under [AS 27.19.070\(a\)](#) to supplement the forfeited financial assurance deposited in the statewide bonding pool for reclamation of the site subject to the forfeiture. If the commissioner is unable to recover the full cost of reclamation under [AS 27.19.070\(a\)](#), the commissioner may use the bonding pool to reclaim the site to the standards of this chapter, except that the commissioner may not use a deposit that is refundable under (b) of this section to fulfill another miner's reclamation obligation.
- (d) A miner not required to post a financial assurance may submit a reclamation plan under [AS 27.19.030\(a\)](#) and participate in the bonding pool.
- (e) A miner may satisfy the requirement under this section for an individual financial assurance by providing, in a form acceptable to and approved by the commissioner, any of the following:
 - (1) a surety bond;
 - (2) a letter of credit;
 - (3) a certificate of deposit;
 - (4) a corporate guarantee that meets the financial tests set in regulation by the commissioner;
 - (5) payments and deposits into the trust fund established in [AS 37.14.800](#); or
 - (6) any other form of financial assurance that meets the financial test or other conditions set in regulation by the commissioner.

Sec. 27.19.050. Exemption for small operations.

(a) [AS 27.19.030](#)(a) and 27.19.040 do not apply to a mining operation

(1) where less than five acres are mined at one location in any year and there is a cumulative unreclaimed mined area of less than five acres at one location; or

(2) where less than five acres and less than 50,000 cubic yards of gravel or other materials are disturbed or removed at one location in any year and there is a cumulative disturbed area of less than five acres at one location.

(b) To obtain an exemption under (a) of this section, a miner shall file a letter of intent notifying the commissioner of the

(1) total acreage and volume of material to be mined;

(2) total acreage to be reclaimed; and

(3) reclamation measures to be used.

(c) A miner exempt under (a) of this section shall file an annual reclamation statement with the commissioner disclosing the total acreage and volume of material mined by the operation in the current year, the total acreage reclaimed, and the specific reclamation measures used to comply with [AS 27.19.020](#). A miner does not qualify for an exemption under (a) of this section for subsequent operations unless the annual reclamation statement for the previous operation has been filed with the commissioner.

(d) A miner exempted from the requirements of [AS 27.19.030](#)(a) and 27.19.040 under (a) of this section that fails to reclaim a mining operation to the standards of [AS 27.19.020](#) is required for two consecutive years to conduct each subsequent mining operation, regardless of size, under an approved reclamation plan and to provide an individual financial assurance.

Sec. 27.19.060. Cooperative management agreements.

The commissioner, on a determination that an agreement is in the best interest of the state, may enter into a cooperative management agreement with the federal government or a state agency to implement a requirement of this chapter or a regulation adopted under it.

Sec. 27.19.070. Violations.

(a) A miner who violates or permits a violation of an approved reclamation plan and fails to comply with a lawful order of the commissioner forfeits the financial assurance or a portion of the assurance and is liable to the state in a civil action for the full amount of reclamation and administrative costs incurred by the state related to the action. A miner exempted under [AS 27.19.050](#)(a) is subject to civil action for the full amount of reclamation and administrative costs incurred by the state related to the action if the commissioner determines that reclamation was not conducted under [AS 27.19.020](#).

(b) In addition to other remedies available under this chapter, the commissioner may suspend or revoke permits or approvals of operations not being conducted under the approved reclamation plan and deny future mining permits and approvals under this title and [AS 38](#) related to the mining operation for failure to reclaim the mining operation to the standards of this chapter.

(c) A miner who has forfeited a financial assurance or has been held liable in a civil action under (a) of this section may conduct future mining operations only after posting a reclamation risk assessment fee equal to five times the amount of financial assurance established under [AS 27.19.040](#)(a) for the proposed mining operation. The reclamation assessment fee shall be refunded after two consecutive years of operation consistent with this chapter.

Sec. 27.19.080. Administrative Procedure Act; regulations.

(a) Except as provided in [AS 44.37.011](#), [AS 44.62](#) (Administrative Procedure Act) applies to this chapter.

(b) The commissioner may adopt regulations to carry out the purposes of this chapter.

Sec. 27.19.100. Definitions. In this chapter,

(1) "**lode mine**" means a mining operation that removes the minerals from consolidated rock rather than from a placer deposit;

(2) "**materials**" means sand, gravel, riprap, rock, limestone, slate, peat, and other substances from the ground that are not locatable or leasable under state law;

(3) "**mined area**"

(A) means an active site of physical extraction, stockpiling, or the disposal of ore, overburden, tailings, or processed materials, stream diversions, bypasses, and settling ponds;

(B) does not include reclaimed areas approved by the commissioner;

(4) "**miner**" means the owner, operator, or leaseholder of a mining operation;

(5) "**mining operation**"

(A) means each function, work, facility, and activity in connection with the development, extraction, and processing of

(i) a locatable or leasable mineral deposit except oil, gas, or coal;

(ii) other materials or of a sand and gravel deposit; and

(iii) each use reasonably incident to the development, extraction, and processing of a locatable or leasable mineral deposit or materials;

(B) includes the construction of facilities, roads, transmission lines, pipelines, and other support facilities;

(6) "**reclamation plan**" means a plan submitted by a miner under regulations adopted by the commissioner for the reclamation of a proposed mining operation;

(7) "**stable condition**" means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes;

(8) "**state land**" includes

(A) the land of the University of Alaska;

(B) the land of state corporations;

(9) "**unnecessary and undue degradation**"

(A) means surface disturbance greater than would normally result when an activity is being accomplished by a prudent operator in usual, customary, and proficient operations of similar character and considering site specific conditions;

(B) includes the failure to initiate and complete reasonable reclamation under the reclamation standard of [AS 27.19.020](#) or an approved reclamation plan under [AS 27.19.030\(a\)](#).

Title 37. Public Finance

Chapter 38.14 SPECIAL FUNDS

Article 10. Mine Reclamation Trust Fund Sec. 37.14.800

Sec. 37.14.800. Mine reclamation trust fund established.

(a) The mine reclamation trust fund is established as a separate trust fund of the state. The principal and earnings of the fund shall be held by the state for the purpose of protecting the public interest in reclaiming mine sites in the state. The fund is composed of the mine reclamation trust fund income account and the mine reclamation trust fund operating account.

(b) The mine reclamation trust fund income account consists of payments and deposits made by miners to satisfy the miners' reclamation bonding or financial assurance obligation under [AS 27.19.040](#) or [AS 27.21.160](#) and earnings on the income account. The mine reclamation trust fund operating account consists of appropriations by the legislature of the annual balance of the mine reclamation trust fund income account and any earnings on those appropriations while in the operating account.

(c) Before payments are accepted into the mine reclamation trust fund income account for a particular mining operation, the commissioner of natural resources and the miner may execute a memorandum of understanding that outlines a schedule of expected payments into the trust fund and the relationship of the payments and accumulated earnings in the trust fund to reclamation obligations of the miner under [AS 27.19.040](#) or [AS 27.21.160](#). The memorandum of understanding may also address expected use of the fund under [AS 37.14.820](#). If the memorandum of understanding addresses investment of the fund with respect to payments made by the miner, the commissioner of revenue must also sign the memorandum.

(d) Nothing in this section creates a dedicated fund.

Section IV: Mining Reclamation Regulations

Title 11. Natural Resources

Chapter 97: MINING RECLAMATION

Article 1 Applicability

11 AAC 97.100. Applicability

(a) This chapter applies to the approval of reclamation plans, reclamation bonding, and enforcement of reclamation requirements under [AS 27.19](#) for locatable mineral, leasable mineral, and material mining operations on state, federal, municipal, and private land. [AS 27.19](#) and this chapter do not apply to a recreational placer mining operation using no mechanized earthmoving equipment other than a dredge with a suction hose six inches or less in diameter, powered by an engine of 18 or fewer horsepower.

(b) [AS 27.19.020](#) sets the minimum standard for conduct of mining operations in Alaska, without regard to land ownership. Although nothing in [AS 27.19](#) requires a miner to file a mining plan before beginning operations, most miners operating on public land are required to do so by other laws. Even where that is not the case, the department recommends that the miner develop a mining plan to help the miner meet the mining standard of [AS 27.19.020](#) and to make the reclamation plan or reclamation letter of intent more effective.

(c) Nothing in [AS 27.19](#) precludes a federal or state agency (including the Department of Natural Resources), a state corporation, the University of Alaska, a municipality, or a private landowner, acting under its own regulatory or proprietary authority, from establishing and enforcing additional requirements or higher standards for reclamation. Compliance with this chapter does not waive or excuse compliance with those additional requirements or higher standards.

(d) This chapter does not apply to:

- (1) fuel spills, chemical neutralization, detoxification, or clean-up of hazardous substances used in mineral processing facilities associated with mining operations;
- (2) surface coal mining reclamation or related operations regulated under [AS 27.21](#); or (3) an area disturbed by a mining operation before October 15, 1991; however, if a mining operation disturbs a previously mined area after October 14, 1991, a miner must reclaim to the standards of [AS 27.19](#) and this chapter; if only a portion of the previously mined area is disturbed after October 14, 1991, this chapter applies only to that disturbed portion.

Article 2

Reclamation Performance Standards

11 AAC 97.200. Land reclamation performance standards

(a) A miner shall reclaim areas disturbed by a mining operation so that any surface that will not have a stream flowing over it is left in a stable condition.

- (1) For the purposes of [AS 27.19.100\(6\)](#) and this section, a stable condition that "**allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes**" means a condition that can reasonably be expected to return waterborne soil erosion to pre-mining levels within one year after the reclamation is completed, and that can

reasonably be expected to achieve revegetation, where feasible, within five years after the reclamation is completed, without the need for fertilization or reseeded. If rehabilitation of a mined site to this standard is not feasible because the surface materials on the mined site have low natural fertility or the site lacks a natural seed source, the department recommends that the miner fertilize and reseed or replant the site with native vegetation to protect against soil erosion; however, [AS 27.19](#) does not require the miner to do so. Rehabilitation to allow for the reestablishment of renewable resources is not required if that reestablishment would be inconsistent with an alternate post-mining land use approved under [AS 27.19.030\(b\)](#) on state, federal, or municipal land, or with the post-mining land use intended by the landowner on private land.

(2) If topsoil from an area disturbed by a mining operation is not promptly redistributed to an area being reclaimed, a miner shall segregate it, protect it from erosion and from contamination by acidic or toxic materials, and preserve it in a condition suitable for later use.

(3) If the natural composition, texture, or porosity of the surface materials is not conducive to natural revegetation, a miner shall take measures to promote natural revegetation, including redistribution of topsoil, where available. If no topsoil is available, a miner shall apply fines or other suitable growing medium, if available. However, a miner may not redistribute topsoil and fines over surfaces likely to be exposed to annual flooding, unless the action is authorized in an approved reclamation plan and will not result in an unlawful point- or non-point-source discharge of pollutants.

(b) A miner shall reclaim an area disturbed by a mining operation so that the surface contours after reclamation is complete are conducive to natural revegetation or are consistent with an alternate post-mining land use approved under [AS 27.19.030\(b\)](#) on state, federal, or municipal land, or with the post-mining land use intended by the landowner on private land. Measures taken to accomplish this result may include backfilling, contouring, and grading, but a miner need not restore the site's approximate original contours. A miner shall stabilize the reclaimed site to a condition that will retain sufficient moisture for natural revegetation or for an alternate post-mining land use approved under [AS 27.19.030\(b\)](#) on state, federal, or municipal land, or for the post-mining land use intended by the landowner on private land.

(c) A pit wall, subsidence feature, or quarry wall is exempt from the requirements of (a) and (b) of this section if the steepness of the wall makes them impracticable or impossible to accomplish. However, a miner shall leave the wall in a condition such that it will not collapse nor allow loose rock that presents a safety hazard to fall from it.

(d) If a mining operation diverts a stream channel or modifies a flood plain to the extent that the stream channel is no longer stable, a miner shall reestablish the stream channel in a stable location. A miner may not place a settling basin in the way of the reestablished channel location unless the fines will be properly removed or protected from erosion.

11 AAC 97.210. Disposal of buildings, structures, and debris on state land

A miner shall remove, dismantle, or otherwise properly dispose of buildings and structures constructed, used, or improved on state land unless the surface owner or

manager authorizes that the buildings and structures may stay. A miner shall remove or otherwise properly dispose of all scrap iron, equipment, tools, piping, hardware, chemicals, fuels, waste, and general construction debris on state land.

11 AAC 97.220. Underground mines

A miner shall stabilize and properly seal the openings of all shafts, adits, tunnels, and air vents to underground mine workings after mine closure to ensure protection of the public, wildlife, and the environment.

11 AAC 97.230. Heap leach operations

After neutralization of heaps, pads, ponds, and other such facilities has been approved by the appropriate regulatory authority (the Environmental Protection Agency or the Department of Environmental Conservation), a miner shall reclaim the site of a heap leach operation to the standards of [AS 27.19](#) and this chapter.

11 AAC 97.240. Acid rock drainage

A miner shall reclaim a mined area that has potential to generate acid rock drainage (acid mine drainage) in a manner that prevents the generation of acid rock drainage or prevents the offsite discharge of acid rock drainage.

11 AAC 97.250. Material sites

(a) Continuous use; intermittent use of a material site. A miner shall reclaim a material site in accordance with [AS 27.19.020](#), [11 AAC 97.200](#), [11 AAC 97.210](#), and this section as contemporaneously as practicable with the mining.

(1) If site conditions permit, a miner shall proceed cell by cell so that reclamation can and will occur immediately after each cell is mined. Mining by cell means dividing the material site into separate units and mining them in an orderly sequence so that topsoil removed from a newly opened unit can be placed on a unit already mined.

(2) If site conditions require that the entire material site be mined continuously, with the materials being removed layer by layer, a miner shall reclaim the site as soon as the mining is completed. However, the commissioner will allow the reclamation to be postponed if the commissioner finds that contemporaneous reclamation is impracticable, because the landowner plans to allow future intermittent mining of the material site by one or more miners over a period of more than one year. Before the commissioner allows such a postponement, the miner or landowner must

(A) submit a reclamation plan for the entire material site, including stockpiles;

(B) ensure that reclamation will occur no later than immediately after the material site is ultimately exhausted or to be abandoned; and

(C) provide for a bond for all mined areas at all times until the reclamation is ultimately completed.

(b) Extraction of materials from river beds (gravel bailing operations). If a miner extracts materials from the bed of a watercourse, the miner shall reestablish a stable bed and bank profile as contemporaneously as practicable with the extraction. A stable bed and bank profile is one that will not substantially alter river currents or change erosion and deposition patterns downstream. In reviewing a reclamation plan for such an operation, the commissioner will use hydrologic information available to the department and other information the commissioner considers relevant.

(c) Peat and topsoil mines. A reclamation plan for a mine that produces peat, topsoil, or similar materials must

provide that at least two inches of a suitable growing medium will be left or replaced on the mined land.

(d) Materials used for other mines. If the primary use of extracted materials is to assist another mining operation regulated under this chapter (such as gravel to build a road to a mining operation), the miner must include the reclamation plan or letter of intent for the material site operation as part of the reclamation plan or letter of intent for the primary mine.

(e) Exempt excavations. If materials are extracted primarily for a non-mining purpose and not part of a mining operation (such as when preparing a building site or highway cut, dredging a shipping channel, or drilling an access tunnel for a non-mining purpose), the requirements of this chapter do not apply even if the materials are sold commercially or used as fill.

(f) Stockpiles. The requirements of this chapter do not apply to materials stockpiled at a distribution point other than the mined area, nor to materials stockpiled at a mined area where no mining has taken place after October 14, 1991. A miner need not reclaim acreage on which materials are stockpiled at an active mine site until the stockpile is used up. However, a miner must locate the stockpile where it will not erode into a waterbody. A stockpile is a storage pile of materials segregated as a commercial product for sale or distribution elsewhere and does not include non-commercial waste rock, overburden, or tailings. A stockpile associated with a mining operation other than for materials is not exempt from this chapter.

(g) Material used for logging. After December 31, 1994, this subsection applies as follows to the reclamation of material sites that are subject to [AS 41.17](#) and [11 AAC 95](#):

(1) submission of a plan of operations under [AS 41.17.090\(c\)](#) and [11 AAC 95.220](#), or compliance with an adopted site-specific forest land use plan for an operation on state land, satisfies the requirement of [AS 27.19.050\(b\)](#) for a letter of intent, if

(A) an individual material site operation is within the limits set out in [AS 27.19.050\(a\)\(2\)](#); and

(B) the plan of operations or site-specific forest land use plan notifies the commissioner that

(i) the total acreage and volume to be mined are within the limits set out in [AS 27.19.050\(a\)\(2\)](#);

(ii) the miner will reclaim all acreage required to be rehabilitated under [11 AAC 95.325](#); and

(iii) compliance with the rehabilitation measures required under [11 AAC 95.325](#) will constitute the reclamation measures to be used to reclaim the total acreage mined;

(2) a plan of operations under [AS 41.17.090\(c\)](#) and [11 AAC 95.220](#), or a timber sale inspection report filed at the end of the operating season for an operation on state land, satisfies the requirement of [AS 27.19.050\(c\)](#) for an annual reclamation statement, if

(A) the miner annually certifies that the material site operation is within the limits set out in [AS 27.19.050\(a\)\(2\)](#), and that the operation is in compliance with [11 AAC 95.325](#); and

(B) inspection under [AS 41.17](#) verifies that the miner is in compliance with [11 AAC 95.325](#);

(3) submission of a plan of operations under [AS 41.17.090\(c\)](#) and [11 AAC 95.220](#), or compliance with an adopted site-specific forest land use plan for an operation on state land, satisfies the requirement of [AS 27.19.030](#) for a reclamation plan, if

(A) an individual material site operation exceeds the limits set out in [AS 27.19.050\(a\)\(2\)](#);

(B) the miner complies with the bonding requirement of [AS 27.19.040](#) in one of the ways set out in [11 AAC 97.400](#) - [11 AAC 97.450](#); and

(C) the commissioner does not disapprove the use of the plan of operations or site-specific forest land use plan as a means of satisfying the requirement of [AS 27.19.030](#) for a reclamation plan;

(4) compliance with [11 AAC 95.325](#) fulfills all other requirements of [AS 27.19](#) and this chapter.

Article 3

Reclamation Plan

11 AAC 97.300. Reclamation plan approval, procedure

(a) At least 45 days before the proposed start of mining activities, a miner not exempted under [AS 27.19.050](#) must submit to the department, or to the appropriate agency with which the department has entered into a cooperative management agreement, a proposed reclamation plan for approval.

(b) If a miner entitled to an exemption under [AS 27.19.050](#) mistakenly files a proposed reclamation plan, the commissioner will, within 15 days after receipt,

(1) return any bond filed,

(2) notify the miner that no plan approval is necessary,

(3) accept the plan as a letter of intent under [AS 27.19.050\(b\)](#), and

(4) remind the miner of the subsequent requirement to file an annual reclamation statement under [AS 27.19.050\(c\)](#).

(c) If the commissioner determines that a proposed reclamation plan is complete, the commissioner will begin a review that will take no longer than 30 days. If the commissioner determines that the plan is incomplete, the commissioner will notify the miner that review is suspended pending receipt of the necessary information. The miner may request an extension of time to supply the information. Failure to supply the necessary information within 30 days after notification, or within a longer period allowed by the commissioner, constitutes withdrawal of the proposed plan from consideration.

(d) The commissioner will approve, disapprove, or approve with conditions a proposed reclamation plan within 30 days after determining that the plan is complete. However, the plan approval does not take effect, and the mining operation may not begin, until the miner satisfies the bond requirement under [11 AAC 97.400](#) - [11 AAC 97.450](#).

(e) If the commissioner determines that additional time is needed because of the size or complexity of the operation, the commissioner will, with written notice to the applicant, extend the period described in (c) or (d) of this section and establish an alternative review schedule.

(f) If a state or federal agency or a municipality has entered into a cooperative management agreement with the commissioner to implement all or part of this chapter, the application review schedule will comply with that agency's or municipality's applicable review schedule.

(g) If a miner objects to the plan as approved, the miner may give the commissioner written notice of that objection within 30 days and request reconsideration or propose a modification of the plan for the commissioner's review. If, after that reconsideration or review, the miner continues to object to the plan as approved, the miner may file a

statement of issues that meets the standard of [AS 44.62.370](#).

(h) If the approved reclamation plan is for an alternate post-mining land use under [AS 27.19.030\(b\)](#) that was proposed by the commissioner, the Department of Fish and Game, the Department of Environmental Conservation, or the landowner rather than by the miner, the miner shall notify the department within 30 days after approval if he or she does not concur. However, a mining locator or material purchaser on public land may not control or determine how the land will be used after a mining operation is completed. The commissioner will, in his or her discretion, modify an approved reclamation plan for a post-mining land use under [AS 27.19.030\(b\)](#) if the miner shows to the commissioner's satisfaction that reclamation for the proposed use would cost the miner more, in time, equipment, or material than reclamation to the basic standard required by [AS 27.19.020](#).

(i) The commissioner may not impose an alternate post-mining land use under [AS 27.19.030\(b\)](#) if the land is privately owned and the state or federal government owns only the reserved minerals. If the state owns both the land estate and the mineral estate, the commissioner will not approve an alternate post-mining land use that is inconsistent with a state land use plan adopted under [AS 38.04.065](#).

11 AAC 97.310. Reclamation plan

(a) Before a miner starts a mining operation subject to [AS 27.19.030](#), or if an exempt miner wishes to operate under the provisions of [AS 27.19.040\(d\)](#), the miner must submit a proposed reclamation plan. The proposed plan must be correct and complete to the best of the miner's knowledge and be signed and dated by the miner or the miner's designee.

(b) A reclamation plan not submitted on a form provided by the commissioner must include the following:

(1) the name, address, and telephone number of the miner or other person who will serve as agent to receive any notice that is required under this chapter, and the names, addresses, and telephone numbers of all other owners, operators, or leaseholders of the mining operation;

(2) a list of all properties, mining locations, or leases on which the mining operation is to be conducted, including the state or federal casefile number, and the legal description of the land on which the mining operation will be conducted, described by legal subdivision, section, quarter-section, township, range, and meridian;

(3) a map (United States Geological Survey topographic map or the equivalent) at a scale no smaller than 1:63,360 (inch to the mile) showing the general vicinity of the mining operation and the specific property to be worked;

(4) a general description and diagram of the mining operation and the mined area that shows and states the number of acres to be mined during each year covered by the plan and that shows the location corners or property boundaries and their relationship to the reclamation work, the tailings or spoil disposal areas, and the areas otherwise affected by the operation; the information furnished must be reasonably appropriate to the scale and complexity of the mine;

(5) the estimated number of yards or tons of overburden or waste and ore or materials to be mined during each year covered by the plan;

(6) a description of the reclamation measures that will be taken to comply with [AS 27.19.020](#) and [11 AAC 97.200](#) -

11 AAC 97.250, including the equipment to be used; a time schedule for the reclamation measures; and, if the miner proposes to reclaim the land to an alternate post-mining land use under AS 27.19.030(b) on state, federal, or private land or to an alternate post-mining land intended by the landowner on private land, a statement of that proposed or intended use; the description must include:

- (A) measures for topsoil removal, storage, protection, and replacement;
- (B) measures for reclamation of tailings impoundments, settling ponds, reservoirs, heaps, open pits and cuts, shafts, adits, tunnels, portals, overburden, waste rock storage areas, and all other affected areas;
- (C) measures for stream placement and reclamation at the end of mining; and
- (D) a proposal for reclamation or post-mining conversion of access roads leading to the mining operation, airstrips, and other associated facilities;

(7) if on private land, a signed and notarized statement by the landowner that the miner has the landowner's permission to operate throughout the period covered by the proposed reclamation plan; however, this statement is not required if the miner is the landowner, or if the mining operation is on a prior federal mining location and the private landowner received title subject to that location under sec. 22(c) of PL 92-203, the Alaska Native Claims Settlement Act (43 U.S.C. 1621(c)); if the private landowner believes that reclamation to the standard set out in AS 27.19.020 is not feasible because the landowner intends to use the land after mining for a purpose incompatible with natural revegetation, the landowner is encouraged to provide this information as part of the statement; for the purposes of this paragraph, the **landowner** means the owner of the estate that includes the mineral or material to be mined.

(c) If a mining operation is a public project for which the successful bidder has not yet been determined, the agency responsible for the project, the landowner, or another third party may submit a proposed reclamation plan on behalf of the successful bidder. The proposed plan must be complete except for the miner's name, address, and telephone number. Before the plan approval takes effect, the miner must provide his or her name, address, and telephone number, sign the plan, and satisfy the bond requirement.

11 AAC 97.320. Term; conditional approval; renewal

(a) The commissioner will, in his or her discretion, approve a reclamation plan for any term not to exceed 10 years. If the plan is for more than one year, the commissioner will, in his or her discretion, require the miner to file an annual report that includes the total acreage and volume of material mined in that year, the total acreage reclaimed in that year, and a statement as to whether the reclamation plan is on schedule.

(b) If the commissioner is not satisfied that the plan complies with AS 27.19 and this chapter, the commissioner will, in his or her discretion, approve the reclamation plan only after inclusion of reclamation-specific monitoring, reporting, or performance conditions.

(c) The commissioner will, in his or her discretion, renew a plan upon written request and demonstration that the miner has complied with the approved reclamation plan and the requirements of AS 27.19 and this chapter, if the commissioner determines that the plan is adequate to cover the renewal period.

11 AAC 97.330. Amendment of reclamation plan

(a) A miner shall ensure that reclamation work complies with an approved reclamation plan. If changing product prices, economics, financing, unanticipated conditions, or suspension of mining operations necessitates a change in the reclamation plan, the miner shall submit an amended reclamation plan for approval before modifying the approved reclamation work.

(b) If new or changed statutory or regulatory requirements affect reclamation under an approved reclamation plan, the miner must submit an amended reclamation plan for approval to demonstrate that reclamation occurring after the effective date of the new requirements will comply with those new requirements.

11 AAC 97.340. Record keeping and inspection; notice address

(a) Until completion of the mining operation, a miner shall keep a copy of the approved reclamation plan, including any approved amendments, at the miner's field office for onsite operations, and shall make the plan available upon request by an authorized representative of the commissioner.

(b) A miner shall allow access to the mining operation to an authorized representative of the commissioner at reasonable times for the purpose of inspecting or monitoring compliance with the reclamation plan.

(c) A miner shall keep the department informed of the miner's correct address until the reclamation is approved as complete.

11 AAC 97.350. Successor in interest

If an interest in a mining operation is transferred from one miner to another by sale, assignment, lease, or otherwise before completion of reclamation and approval by the commissioner, the plan must be amended as provided in 11 AAC 97.330 to reflect the transfer. The commissioner will approve the amendment and will release the predecessor in interest from the reclamation obligations, if

- (1) the operation is in compliance with the reclamation plan,
- (2) the successor assumes full responsibility and liability under the approved reclamation plan, and
- (3) the bonding requirements are met.

Article 4 **Reclamation Bonding**

11 AAC 97.400. Bonding required

A miner who is not exempt under AS 27.19.050(a) shall either

(1) participate in the statewide bonding pool under 11 AAC 97.425;

(2) post a performance bond with the commissioner to ensure complete compliance with AS 27.19, this chapter, and the approved reclamation plan, consisting of either

(A) a corporate surety bond under 11 AAC 97.405; or

(B) a personal bond accompanied by a letter of credit, by a certificate of deposit, or by a deposit of cash or gold, under 11 AAC 97.410;

(3) post a bond or financial guarantee with another government agency to satisfy that agency's reclamation-related bond requirements if, in a cooperative management agreement with that agency, the commissioner has determined that the agency's bond requirements are at least as effective as those of AS 27.19 and that requiring another bond would be unnecessary; or

- (4) post a general performance bond that
- (A) is written in favor of an agency of the State of Alaska;
 - (B) requires reclamation to standards no less effective than those of [AS 27.19](#) and this chapter;
 - (C) is in an amount no less than \$750 per acre of mined area or area to be mined;
 - (D) remains in effect until the mined area is reclaimed to standards no less effective than those of [AS 27.19](#) and this chapter; and
 - (E) requires that, if the bond is liquidated, proceeds in the amount of \$750 per acre of mined area will be paid or reserved exclusively for the purpose of reclamation until all mined areas are reclaimed to standards no less effective than those of [AS 27.19](#) and this chapter.

11 AAC 97.405. Corporate surety bond

A corporate surety bond must

- (1) be executed by a corporate surety approved and authorized to do business in this state;
- (2) be submitted on a form prescribed by the commissioner; and
- (3) remain in effect until the reclamation of all land covered by the bond is completed to the standard of [AS 27.19](#) and this chapter, and its release is approved by the commissioner.

11 AAC 97.410. Personal bond and letter of credit, certificate of deposit, or deposit of cash or gold

(a) A personal bond must be submitted on a form prescribed by the commissioner and must be accompanied by

- (1) an irrevocable letter of credit issued by a bank or other financial institution authorized to do business in the United States;
- (2) a certificate of deposit in the amount of the bond issued in sole favor of the department by a bank or other financial institution authorized to do business in this state;
- (3) a cash deposit maintained in a depository account as directed by the commissioner; or
- (4) a deposit of gold held in escrow by a bank or other financial institution, payable to the State of Alaska if the bond is forfeited, and with a value of 25 percent more than the bond obligation, to allow for potential decreases in gold prices.

(b) A personal bond and letter of credit, certificate of deposit, or deposit of cash or gold must remain in effect until the reclamation of all land covered by the bond is completed to the standard of [AS 27.19](#) and this chapter, and their release is approved by the commissioner.

11 AAC 97.415. Acreage to be bonded

(a) Acreage that must be bonded before a mining operation begins in any calendar year is limited to any area to be mined during that calendar year, plus any mined area (as that term is defined in [11 AAC 97.990](#)) mined in a previous year for which reclamation must be completed under this chapter; it is not necessarily the same as the entire acreage of the mining operation. For an underground mine, only the surface acreage disturbed by the operation constitutes "mined area" for purposes of the bond requirement.

(b) After a multi-year reclamation plan goes into effect, the miner shall ensure that the bond amount is sufficient at all times to cover any area to be mined during the current

calendar year, plus any area mined in a previous year that has not yet been reclaimed.

(c) Any previously reclaimed area that is to be mined again is subject to the bond requirement in the year that mining resumes and until it is reclaimed.

(d) In calculating the number of acres that must be bonded, a miner must round up to the next whole number.

11 AAC 97.420. Amount of bond

(a) The amount of the performance bond required by [11 AAC 97.400](#) is \$750 per acre, or the reduced per-acre amount determined by the commissioner under (b) of this section, multiplied by the acreage total determined under [11 AAC 97.415](#).

(b) If a miner shows to the commissioner's satisfaction that the reasonable and probable costs of reclamation under an approved reclamation plan are less than \$750 per acre, the commissioner will reduce the bond to those costs. The miner's showing must be submitted along with the proposed reclamation plan and must include an estimate of the labor and equipment costs that would be incurred to hire a third-party contractor to perform the reclamation in accordance with the plan. In evaluating a miner's proposal for reduction of the bond amount, the commissioner will consider the nature of the surface, its uses, improvements in the vicinity of the land, the degree of risk involved in the mining operation, and all other relevant factors. The commissioner will make a determination on this request of bond reduction in the time schedules set out in [11 AAC 97.300](#).

(c) A miner may provide a bond for more than the amount required by (a) and (b) of this section.

11 AAC 97.425. Bonding pool

(a) A statewide bonding pool has been established by the department for mining operations subject to [AS 27.19](#). Instead of posting an individual performance bond, a miner may participate in the bonding pool.

(b) To participate in the bonding pool each year, the miner shall pay into the pool a deposit of 15 percent of the miner's total bond amount determined under [11 AAC 97.420](#)(a) for that year, plus an annual nonrefundable fee of five percent of the total bond amount for that year. These percentages are the same for all operations.

(c) Except for an operation whose bond amount is reduced below \$750 per acre under [11 AAC 97.420](#)(b), the percentages set by (b) of this section result in a bonding pool deposit of \$112.50 per acre and an annual nonrefundable fee of \$37.50 per acre.

(d) No reclamation plan approval goes into effect until the bonding pool deposit and annual nonrefundable fee are paid. The annual nonrefundable fee for the first year of a reclamation plan may not be prorated or reduced. Subsequent annual nonrefundable fees for any unreclaimed acreage are due by April 1 of each year that the reclamation is not completed or before the mining operation begins in each calendar year, whichever is earlier. If the amount of acreage requiring reclamation varies from year to year under the plan, the miner is responsible for making the appropriate payment, including an increased deposit when required, each year. If the acreage decreases, the miner may apply, under [11 AAC 97.435](#), for a refund of the excess deposit. The miner must pay the annual nonrefundable fee, and the increased deposit when required by the reclamation plan, without billing from the department. A late payment automatically suspends approval of the

reclamation plan until full payment, including the late-payment fee set out in [11 AAC 05.010](#), is received, at which time the reclamation plan is automatically reinstated. During such a suspension, the miner may not engage in a mining operation.

(e) If the commissioner, in his or her discretion, allows a miner who is subject to the bonding requirement of [AS 27.21.160](#) to participate in the bonding pool, the bonding pool is not obligated for an amount exceeding \$750 per acre. Any additional bond amount required under [AS 27.21.160](#) must be provided under one of the mechanisms allowed under [AS 27.21.160](#) and [11 AAC 90](#).

11 AAC 97.430. Liability exceeding bond amount; bonding pool deposit

The posting of a performance bond, or participation in the bonding pool, does not limit the department's right to seek further compensation for a violation of [AS 27.19](#), this chapter, or the approved reclamation plan. The miner is liable for the full costs of reclamation to the standards of [AS 27.19](#), this chapter, and the approved reclamation plan, regardless of the amount of the reclamation bond or bonding pool deposit and fees.

11 AAC 97.435. Release or decrease of bond, and refund of bonding pool deposit

(a) An application for release or decrease of the amount of a performance bond, or for refund of a deposit paid into the bonding pool, must include a sworn statement, executed under penalty of perjury, verifying that the miner has examined the requirements of his or her approved reclamation plan, has investigated the nature and extent of reclamation, and certifies as true that all applicable reclamation responsibilities have been completed.

(b) Before authorizing release of or decrease in the amount of the bond, or refund of a deposit paid into the bonding pool, the commissioner will inspect or review actions taken under the approved reclamation plan, and will make a written finding that each applicable requirement of the approved reclamation plan has been completed. The commissioner will, in his or her discretion, require the miner to submit photographs or other information documenting the reclamation, and, if no inspection takes place, the commissioner will base his or her finding and bond release on the miner's documentary evidence and sworn statement. If reclamation was done in accordance with the plan and with the miner's sworn statement, the commissioner's finding constitutes approval of the reclaimed area and releases the miner from liability under [AS 27.19](#). If reclamation was not done in accordance with the plan and with the miner's sworn statement, the miner remains liable under [AS 27.19](#), notwithstanding the commissioner's finding.

(c) If another agency with jurisdiction over the mining operation agrees to accept the miner's posting of a bond or bond pool deposit with the commissioner as satisfying its own bond requirement, and has filed a written request or entered into a cooperative management agreement under [AS 27.19.060](#) to be notified before the commissioner releases or reduces the bond or bond pool deposit, the commissioner will give the other agency reasonable notice.

(d) Upon request by the miner and consent of the affected surety or financial institution, the commissioner will apply the performance bond, or the bonding pool deposit or a portion of it, to new acreage under a new reclamation plan or amendment to a reclamation plan submitted by the

miner. The non-refundable annual fee is not transferable and is due for all new acreage to be mined.

11 AAC 97.440. Interest; use of bonding pool

(a) No miner or surety is entitled to receive interest on any sum deposited into the bonding pool.

(b) The bonding pool, including any accrued interest, may be used by the department only to pay the reclamation costs that have not been paid by the miner or the miner's surety despite the department's reasonable efforts to recover the costs from the miner and the miner's surety. Reclamation funded from the bonding pool will be performed to the standard of [AS 27.19.020](#) and [11 AAC 97.200 - 11 AAC 97.250](#). The commissioner will, in his or her discretion, use money in the bonding pool for reclamation in accordance with [AS 27.19](#), except that the commissioner will not use a refundable deposit to fulfill another miner's reclamation obligation. The commissioner has no obligation or authority under [AS 27.19](#) to undertake reclamation expenditures beyond the disburseable balance of the bonding pool.

11 AAC 97.445. Assignment

If a miner assigns his or her interest in any uncompleted mining operation, and the commissioner has amended the reclamation plan to reflect the transfer and released the assignor in accordance with [11 AAC 97.350](#), the commissioner will transfer the assignor's bonding pool deposit and annual nonrefundable bonding pool fee to the assignee upon the written request of the assignee and written consent of the assignor.

11 AAC 97.450. Exception to bonding requirement No bond is required under [AS 27.19.040](#) and [11 AAC 97.400](#) if the miner is an agency of the State of Alaska or federal government or is a municipality.

Article 5

Exemptions for Small Operations

11 AAC 97.500. Letter of intent

(a) The letter of intent required by [AS 27.19.050](#)(b) must be filed annually on a form provided by the department before the mining begins. The following information must be provided:

- (1) the name, address, and telephone number of the miner or other person who will serve as agent to receive any notice that is required by this chapter, and the names, addresses, and telephone numbers of all other owners, operators, or leaseholders of the mining operation;
- (2) a list of all properties, mining locations, or leases on which the mining operation is to be conducted, including the state or federal casefile number, and the legal description of the land on which the mining operation is to be conducted, described by legal subdivision, section, quarter-section, township, range and meridian;
- (3) a map (United States Geological Survey topographic map or the equivalent) at a scale no smaller than 1:63,360 (inch to the mile) showing the general vicinity of the mining operation and the specific property to be worked; for a material mining operation adjacent to an airport or a public road, the commissioner will, in his or her discretion, waive this requirement and allow the location to be specified by the name of the airport or by the road milepost;

- (4) a diagram of the mining operation and the mined area that shows and states the number of acres to be mined during the year and that shows the location corners or property boundaries and their relationship to the reclamation work, the tailings or spoil disposal areas, and the areas otherwise to be affected by the operation; the information furnished must be reasonably appropriate to the scale and complexity of the mine;
- (5) total acreage and volume of material to be mined, and the existing acreage of mined area;
- (6) total acreage to be reclaimed in the year covered by the letter of intent;
- (7) a description of the reclamation measures that will be taken to comply with [AS 27.19.020](#) and [11 AAC 97.200 - 11 AAC 97.250](#);
- (8) if on private land, a signed and notarized statement by the landowner that the miner has the landowner's permission to operate throughout the period covered by the letter of intent; however, this statement is not required if the miner is the landowner, or if the mining operation is on a prior federal mining location and the private landowner received title subject to that location under sec. 22(c) of PL 92-203, the Alaska Native Claims Settlement Act (43 U.S.C. 1621(c)); if the private landowner believes that reclamation to the standard set out in [AS 27.19.020](#) is not feasible because the landowner intends to use the land after mining for a purpose incompatible with natural revegetation, the landowner is encouraged to provide this information as part of the statement. For the purposes of this paragraph, the landowner is the owner of the estate that includes the mineral or material to be mined.
- (b) The miner shall keep the department informed of the miner's correct address until the reclamation is completed.

11 AAC 97.510. Annual reclamation statement

- (a) The annual reclamation statement required by [AS 27.19.050\(c\)](#) must be filed on a form provided by the department and must include photographs or videotapes dated and described as to location, or other information acceptable to the commissioner, documenting that the reclamation was completed. It must also state the cumulative total of unreclaimed acreage.
- (b) The annual reclamation statement must be filed or postmarked by December 31 for each calendar year.
- (c) A miner who files a letter of intent must file an annual reclamation statement, even if no mining took place during that year.

**Article 6
Violations and Penalties**

11 AAC 97.600. Failure to file reclamation statement

A miner who fails to file an annual reclamation statement in accordance with [11 AAC 97.510](#) may not continue or resume that mining operation without an approved reclamation plan and a bond. The miner may restore the exemption by fully complying with [11 AAC 97.510\(a\)](#) and (c). Until the miner supplies the documentation required by those subsections, a rebuttable presumption is established that the miner has failed to reclaim the mining operation to the standards of [AS 27.19](#) and this chapter.

11 AAC 97.610. Failure to meet requirements or reclaim small operation

The penalties stated in [AS 27.19.050\(d\)](#) apply if a miner who obtained an exemption under [AS 27.19.050\(a\)](#) exceeds the acreage or cubic yardage limits of that subsection, or if the commissioner determines that the miner has failed to reclaim the mining operation to the standards of [AS 27.19](#) and this chapter. These penalties apply regardless of where the miner's subsequent mining operation occurs.

11 AAC 97.620. Violation of reclamation plan

[AS 27.19.040\(c\)](#) applies to a participant in the statewide bonding pool in the same way as to a miner who has filed an individual performance bond. Under the circumstances set out in [AS 27.19.040\(c\)](#), a statewide bonding pool participant's bonding pool deposit will become nonrefundable.

11 AAC 97.630. Administrative determination of violation

If, after the commissioner issues a written order to a miner, the miner fails to correct a violation of [AS 27.19](#) or this chapter within the period set by the commissioner, the commissioner will, in his or her discretion, serve an accusation in accordance with [AS 44.62.360](#), and 44.62.380 and will conduct further proceedings in accordance with [AS 44.62.330 - 44.62.650](#).

11 AAC 97.640. Reclamation risk assessment fee

- (a) The reclamation risk assessment fee required by [AS 27.19.070\(c\)](#) applies to a miner who has had any portion of his or her bonding pool deposit become nonrefundable, in the same way as it applies to a miner who has forfeited a reclamation bond or has been held liable in a civil action. The requirement applies to any future mining operation by that miner, regardless of location, for the period set out in (d) of this section.
- (b) The reclamation risk assessment fee required by [AS 27.19.070\(c\)](#) must be tendered to the department in the form of a performance bond meeting the requirements of [11 AAC 97.405](#) or [11 AAC 97.410](#). The miner may not participate in the statewide bonding pool to meet this requirement.
- (c) The reclamation risk assessment fee is required in addition to, not instead of, the bonding requirements of this chapter.
- (d) The reclamation risk assessment fee will be refunded to the miner after two consecutive years of mining operations in complete compliance with [AS 27.19](#), this chapter, and the approved mining reclamation plan then in effect for that miner.
- (e) If a miner who has posted a reclamation risk assessment fee is determined to be in violation of [AS 27.19](#), this chapter, or an approved reclamation plan, the reclamation risk assessment fee will be forfeited to the statewide bonding pool.

Article 7

Cooperative Management Agreements

11 AAC 97.700. Cooperative agreements

(a) Upon a written finding that the state's best interest will be served, the commissioner will, in his or her discretion, enter into a cooperative management agreement with a federal or state agency under [AS 27.19.060](#), or with a municipality under art. X, sec. 13 of the Alaska Constitution, to implement [AS 27.19](#) and this chapter. Except as provided in (b) of this section, the cooperative agreement will, in the commissioner's discretion, provide

(1) that the federal or state agency will implement [AS 27.19](#) and this chapter with respect to the land that it manages, or that the municipality will implement [AS 27.19](#) and this chapter with respect to the land that it owns; or

(2) that the department and the federal or state agency or the municipality will implement both its own and the other's reclamation authority on a reciprocal basis.

(b) A cooperative agreement with another state agency will, in the commissioner's discretion, delegate to the state agency administrative review authority under the Administrative Procedure Act.

(c) For purposes of this section,

(1) "**state agency**" means any organizational unit of the executive branch of the state, but does not include any agency in the judicial or legislative branches of the state government;

(2) "**federal agency**" means any organizational unit of the executive branch of the federal government, but does not include an agency in the judicial or legislative branches of the federal government.

Article 8

General Provisions

11 AAC 97.900. Boundary maintenance

In order to provide an accurate reference for the location of the reclaimed area, a miner must maintain or reestablish all location corners or property boundaries described in the reclamation plan until the commissioner inspects the site or reviews it for reclamation approval or bond release under [11 AAC 97.435](#).

11 AAC 97.910. Multiple miners; liability

(a) If more than one miner is involved in a mining operation, the commissioner will consider the miner or other person identified as the agent in the letter of intent or reclamation plan to be the miners' agent for purposes of any notice under this chapter until the department is otherwise notified. All notices provided by the department to the miners' agent constitute notice to all miners involved in a mining operation.

(b) All miners involved in a mining operation are jointly and severally liable for any penalty for failure to comply with [AS 27.19](#) and this chapter.

11 AAC 97.990. Definitions

In this chapter:

(1) "**commissioner**" means the commissioner of natural resources;

(2) "**mined area**" has the same meaning as in [AS 27.19.100\(2\)](#); however, that definition applies only if the mining occurred after October 14, 1991;

(3) "**miner**" has the same meaning as in [AS 27.19.100\(3\)](#); however, "miner" does not include a state, federal, or municipal landowner, regardless of whether that landowner retains a royalty interest as lessor, unless it owns or operates the mining operation; nor does "miner" include any other landowner, unless the landowner has a managing interest or working interest in the mining operation;

(4) "**previously mined area**" means the land surface, reclaimed or not, that is left by a mining activity.

Section V: Exploration Incentive Credit

TITLE 27. MINING

Chapter 27.30 EXPLORATION INCENTIVE CREDITS

Sec. 27.30.010. Exploration incentive credits authorized.

(a) The commissioner shall grant to a person described in (d) of this section an exploration incentive credit for the eligible costs of each of the following exploration activities that are performed on or for the benefit of land in the state for the purpose of determining the existence, location, extent, or quality of a locatable or leasable mineral or coal deposit, regardless of whether the land is state-owned land:

- (1) surveying by geophysical or geochemical methods;
- (2) drilling exploration holes;
- (3) conducting underground exploration;
- (4) surface trenching and bulk sampling; or
- (5) performing other exploratory work, including aerial photographs, geological and geophysical logging, sample analysis, and metallurgical testing.

(b) Except as provided in (c) of this section, an exploration incentive credit may not be granted under (a) of this section for exploration activity described in that subsection that occurs after the mine construction commencement date of a new mine. In this subsection, "**mine construction commencement date of a new mine**" means the date no later than which all of the following have occurred:

- (1) there has been issued to the owner or an agent of the owner permits, leases, and title and other rights in land, and other approvals, permits, licenses, and certificates, by federal, state, and local agencies that a reasonable and prudent person would consider adequate to commence construction of a mine in the expectation that all other approvals, permits, licenses, and certificates necessary for the completion of the facilities will be obtained;
- (2) all approvals, permits, licenses, and certificates are in full force and effect, unrevoked and without any modification that might jeopardize the completion or continued construction of the mine; and
- (3) an order, judgment, decree, determination, or award of a court or administrative or regulatory agency enjoining, either temporarily or permanently, the construction or the continuation of construction of the mine is not in effect.

(c) In addition to the grant of an exploration incentive credit for a new mine under (b) of this section, an exploration incentive credit may be granted under (a) of this section for exploration activity described in that subsection for a mine that had previously operated, has ceased to operate, and for which all previous mining approvals, permits, licenses, and certificates that allowed the previous operation are no longer in effect. However, under this subsection, an exploration incentive credit may not be granted under (a) of this section for exploration activity that occurs after the mine reopening date. In this subsection, "**mine reopening date**" means the date not later than which all of the following have occurred:

- (1) there has been issued to the owner or an agent of the owner permits, leases, and title and other rights in land, and other approvals, permits, licenses, and certificates, by federal, state, and local agencies that a reasonable and prudent person would consider adequate to commence operation of the former mine in the expectation that all other approvals, permits, licenses, and certificates necessary for the completion of the facilities will be obtained;
- (2) all approvals, permits, licenses, and certificates for the reopened mine are in full force and effect, unrevoked, and without any modification that might jeopardize the reopening of the former mine; and
- (3) an order, judgment, decree, determination, or award of a court or administrative or regulatory agency enjoining, either temporarily or permanently, the reopening of the former mine is not in effect.

(d) An exploration incentive credit may be granted under this chapter only to

- (1) a natural person who is at least 18 years of age;
- (2) a partnership qualified to do business in the state;
- (3) a corporation qualified to do business in the state;
- (4) a limited liability company qualified to do business in the state;
- (5) a legal guardian or trustee of a qualified natural person described in (1) of this subsection; or
- (6) any association of persons listed in (1) - (5) of this subsection.

Sec. 27.30.020. Procedure for requesting and taking the credit.

To obtain the credit authorized by this chapter,

(1) a person shall submit a request for the credit as follows:

- (A) the person may submit a request and a statement of expenditures
 - (i) whenever the amount of credit certified in the request totals at least \$250,000 and the period covered is at least one year; or
 - (ii) when the person is ready to take the entire balance of the credit, regardless of the total amount of the credit;
- (B) the request must be on a form provided by the department and
 - (i) describe the work accomplished during each year of the period covered by the request, the number of employees, and the names and number of consultants;
 - (ii) provide a detailed list or ledger of expenditures of the accomplishments described in (i) of this subparagraph and a list of exploration activity data that will be provided to the department; and

- (iii) provide a statement by a certified public accountant that expenditures are supported by receipts for all activities eligible for the credit under [AS 27.30.010\(a\)](#) for each calendar year that these expenditures for a single mining operation equal or exceed \$40,000;
- (C) the person submitting the request is not required to transmit copies of receipts with the request, but the statement of expenditures is subject to audit in the discretion of the commissioner;
- (D) if the commissioner determines to audit the statement of expenditures, the commissioner may require the person submitting the request to justify claims of expenditures with receipts and other reliable information;
- (E) the commissioner shall respond to the request within six months of the date of submission of the request by certifying or not certifying the person's expenditures; if the commissioner
 - (i) does not certify all of the expenditures, the commissioner shall state the reasons for denial of certification of the expenditures not certified and give the person making the request an opportunity to correct any problems or to provide additional information;
 - (ii) certifies expenditures, the commissioner shall specify the exploration activity data requirements that must be presented to the department at the time of the taking of the credit;
- (F) if the commissioner neither certifies nor denies certification of expenditures within six months of the date of submission of the request, the expenditures are certified as submitted;
- (2) the person whose expenditures have been certified under (1) of this subsection may thereafter request the taking of the credit for the certified expenditures as follows:
 - (A) the person shall deliver to the commissioner the exploration activity data identified by the commissioner under (1)(E)(ii) of this section and shall request the commissioner's approval of the taking of the credit;
 - (B) the commissioner shall approve or disapprove the taking of the credit within 60 days after receipt of the request for taking of the credit; if the
 - (i) exploration activity data complies with the requirements identified by the commissioner under (1)(E)(ii) of this section, the commissioner shall approve the taking of the credit and shall, within 30 days, notify the Department of Revenue that the taking of the credit has been approved;
 - (ii) request is disapproved, the commissioner shall state the reasons for disapproval and offer the person seeking to take the credit an opportunity to correct any problems or to provide additional exploration activity data or other information;
 - (C) if the commissioner neither approves nor disapproves the request to take the credit within 60 days after submission of the request, the taking of the credit is approved; the commissioner shall, within 30 days, notify the Department of Revenue that the taking of the credit has been approved under this subparagraph.

Sec. 27.30.025. Conditional certification.

- (a) A person may submit a request for conditional certification for the credit when
 - (1) the person has conducted or intends to conduct exploration activities using an innovative technique;
 - (2) there exists a substantial question regarding the nature of the exploration data that will be delivered to the department; or
 - (3) the person contemplates assigning a credit under [AS 27.30.060](#) and there exists a substantial question regarding whether the expenditures will be certified.
- (b) A person shall submit a request for conditional certification on a form provided by the department.
- (c) The commissioner shall respond to the request within six months from the date of the submission of the request for conditional certification by issuing a letter stating that
 - (1) under the specific facts and circumstances proposed by the person, the proposed expenditures and data appear eligible for a credit;
 - (2) there is not adequate information to determine whether the proposed expenditures and data appear to be eligible for a credit; or
 - (3) the expenditures and data as presented do not appear to be eligible for a credit.
- (d) Approval of conditional certification under (c)(1) of this section does not relieve a person from obtaining certification of the credit under [AS 27.30.020](#).

Sec. 27.30.030. Application of the credit.

- (a) In a tax year or royalty payment period, subject to (c) of this section and the respective limitations of this subsection, the person may apply the credit, the taking of which was approved under [AS 27.30.020\(2\)](#), against
 - (1) taxes payable by the person
 - (A) under [AS 43.65](#); application of the credit under this subparagraph may not exceed the lesser of
 - (i) 50 percent of the person's tax liability under [AS 43.65](#) for the tax year that is related to production from the mining operation at which the exploration activities occurred, as shown under (b) of this section; or
 - (ii) 50 percent of the person's total tax liability under [AS 43.65](#) for the tax year;
 - (B) under [AS 43.20](#); application of the credit under this subparagraph may not exceed the lesser of
 - (i) an amount equal to the amount determined under (A)(i) of this paragraph; or
 - (ii) 50 percent of the person's total tax liability under [AS 43.20](#) for the tax year; and
 - (2) mineral production royalty payments payable by the person under [AS 38.05.135](#) - 38.05.160 and 38.05.212 for production from the mining operation at which the exploration activities occurred; application of the credit under this

paragraph may not exceed 50 percent of the person's mineral production royalty payment liability from the mining operation at which the exploration activities occurred.

(b) If the person applies the credit against the person's tax liability under (a)(1)(A)(i) or (a)(1)(B)(i) of this section, the commissioner of revenue shall disallow application of the credit under that provision unless the person files with the person's tax return an accounting of the person's mining operation activities for each mining operation that is included in the tax return and as to which the credit is being applied. The accounting of mining operation activities required by this subsection shall be made

(1) on a form prescribed by the Department of Revenue; on the form, the person shall

(A) identify the mining operations for which the credit is claimed; and

(B) set out the gross income attributable to the mining operations and other information about the mining operations that the Department of Revenue may require;

(2) without regard to an exemption to which the person may be entitled under [AS 43.65.010\(a\)](#).

(c) The person may not apply the credit under this section if the application would exceed the total amount of the credits approved under [AS 27.30.020\(2\)](#).

Sec. 27.30.040. Credit may be carried forward.

Except as its application is limited by [AS 27.30.030](#) and 27.30.050, a portion of a credit that is not applied under [AS 27.30.030](#) during a tax year or royalty payment period may be carried forward to and applied during a subsequent tax year or royalty payment period.

Sec. 27.30.050. Limit on application of credit.

An exploration incentive credit for a mining operation may not exceed \$20,000,000 and must be applied within 15 tax years or royalty payment periods after the taking of the credit is approved under [AS 27.30.020\(2\)](#), but the tax years or royalty payment periods in which the credit is applied need not be

(1) the tax year or royalty payment period in which the person first incurs liability for payment of tax or royalty based on the person's activity that is the basis of the claim of the exploration incentive credit; or

(2) consecutive periods.

Sec. 27.30.060. Assignment of credit.

A person may assign an exploration incentive credit to the person's successor in interest for the mining operation at which the exploration activities occur, but only if the successor in interest is a person qualified to obtain the credit under [AS 27.30.010\(d\)](#). An exploration incentive credit may not be assigned except as permitted in this section.

Sec. 27.30.070. Responsibility for record of use of credit.

For each mining operation, the commissioner may require each person who proposes to take the credit under [AS 27.30.020\(2\)](#) to provide with the request to take the credit a record of

(1) the person's past use of credits taken under [AS 27.30.020\(2\)](#) and 27.30.030; and

(2) other information that the commissioner requires to determine if approval of the taking of the credit by the person would exceed the limits on use of the credit under this chapter.

Sec. 27.30.080. Relationship to other funds.

Amounts due the permanent fund under [AS 37.13.010](#) shall be calculated before the application of a credit extended under this chapter.

Sec. 27.30.090. Confidentiality of data.

(a) The commissioner shall keep the exploration activity data provided under [AS 27.30.020](#) confidential for 36 months after receipt by the department.

(b) The department is liable in damages to a person who provided the exploration activity data under [AS 27.30.020](#) if the data is disclosed in violation of (a) of this section.

Sec. 27.30.095. Fees.

The commissioner may charge a fee for the direct costs incurred by the department and the Department of Revenue for evaluating or auditing an application to certify the credit authorized under [AS 27.30.010](#), including the cost of contractors selected by the commissioner to assist in the evaluation or audit. The fee may not exceed

(1) \$500 for each application covering one or more years if the amount claimed in the application is \$1,000,000 or less;

(2) \$1,000 for each application covering one or more years if the amount claimed is more than \$1,000,000.

Sec. 27.30.099. Definitions.

In this chapter,

(1) "**credit**" means the exploration incentive credit for activities involving locatable and leasable mineral and coal deposits authorized by this chapter;

(2) "**eligible costs**" means the costs incurred for activities in direct support of exploration activity conducted at the mining operation of the exploration activity for the purpose of determining the existence, location, extent, or quality of a mineral or coal deposit; the term

- (A)** includes
- (i)** the costs of obtaining the approvals, permits, licenses, and certificates for an exploration activity set out in [AS 27.30.010\(a\)\(1\) - \(5\)](#);
 - (ii)** direct labor costs and the cost of benefits for employees directly associated with work described in [AS 27.30.010\(a\)\(1\) - \(5\)](#);
 - (iii)** the cost of renting or leasing equipment from parties not affiliated with the person requesting and taking the credit;
 - (iv)** the reasonable costs of owning, maintaining, and operating equipment;
 - (v)** insurance and bond premiums associated with the activities set out in (i) - (iv) of this subparagraph;
 - (vi)** payments to consultants and independent contractors; and
 - (vii)** the general expense of operating the person's business, including the costs of materials and supplies, if those expenses and costs are directly attributable to the work described in [AS 27.30.010\(a\)\(1\) - \(5\)](#);
- (B)** does not include return on investment, insurance or bond premiums not covered under (A)(v) of this paragraph, or any other expense that the person has not incurred to complete work described in [AS 27.30.010\(a\)\(1\) - \(5\)](#);
- (3) "exploration activity data"** includes, as applicable,
- (A)** a representative skeleton core for each hole cored or a representative set of cuttings for each hole rotary drilled;
 - (B)** chemical analytical data and noninterpretive geophysical data;
 - (C)** aerial photographs or a topographic or geologic map showing the location of the drill holes, sample locations, or the other exploration activities undertaken;
- (4) "geochemical methods"** means soil, rock, water, air, vegetation, and similar samples collected and their chemical analyses;
- (5) "geophysical methods"** means all geophysical data gathering methods used in mineral or coal exploration, including seismic, gravity, magnetic, radiometric, radar, and electromagnetic and other remote sensing measurements;
- (6) "mining operation"** includes all operating and nonoperating activities related to a mineral deposit interest, and may be comprised of one or more mining properties; in determining whether mining properties are part of the same mining operation, the commissioner may consider whether the operation, in conducting mining activities on several mining properties, uses common personnel, supply, and maintenance facilities, mining-related treatment processes, storage facilities, roads, pipelines and transportation equipment, and mining techniques and technology, and may also consider the extent to which the mineral deposit interest comprises a common mining property;
- (7) "person"** means only those persons listed in [AS 27.30.010\(d\)](#).

Section VI: Production Royalty and Mining License Tax

Title 38. Public Land

Chapter 38.05 ALASKA LAND ACT

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.

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.

Sec. 38.05.212. Production royalty.

(a) In exchange for and to preserve the right to extract and possess the minerals produced, the holder of a mining claim, leasehold location, or mining lease, including a mining lease under [AS 38.05.250](#), shall pay a royalty on all minerals produced from land subject to the claim, leasehold location, or mining lease during each calendar year, or each fiscal year if the miner does not file the mining license tax on a calendar year basis.

(b) The production royalty

(1) is three percent of net income as determined under [AS 43.65](#); and

(2) is subject to the exploration incentive credit authorized by [AS 27.30](#).

(c) The commissioner shall adopt regulations to implement this section and to provide for combined reporting and paying of production royalties for mining operations that include more than one mining claim, leasehold location, or mining lease.

(Also See Section III: AS 38.05.135: Leasing generally, royalty and net profit share payment and interest.)

Section VI: Production Royalty

Title 11: Natural Resources

Chapter 86: MINING RIGHTS

Article 8

Mining Production Licenses

11 AAC 86.700. Applications for production licenses

Repealed.

11 AAC 86.705. Application review Repealed.

11 AAC 86.710. Public notice Repealed.

11 AAC 86.715. Review after public notice Repealed.

11 AAC 86.720. Commissioner's determination to adjudicate Repealed.

11 AAC 86.725. Adjudication by commissioner Repealed.

11 AAC 86.730. No adjudication by commissioner Repealed.

11 AAC 86.735. Interim mining Repealed.

11 AAC 86.740. Transfer of a production license Repealed.

11 AAC 86.745. Expiration of a production license Repealed.

11 AAC 86.750. Definitions Repealed.

Article 9

Mining Production Royalty

11 AAC 86.760. Production royalty

As required by [AS 38.05.212](#), the holder of a mining claim, leasehold location, or mining lease, including a mining lease under [AS 38.05.250](#), shall pay a royalty of three percent of net income, as determined under [AS 43.65](#) and [15 AAC 65](#), on all minerals produced from land subject to the claim, leasehold location, or mining lease, subject to the following exceptions:

- (1) If the holder segregates its gross income, deductions, and expenses under [11 AAC 86.766](#), the holder's gross income, deductions, and expenses attributable to minerals produced from land owned by the federal government, a borough or municipality, a native corporation, or a private party shall be omitted from the calculation of net income.
- (2) Net income must be determined and reported, and the production royalty must be paid, for each calendar year rather than each tax year.
- (3) Credit will be given for annual rental paid on a mining claim, leasehold location, or mining lease in production that year. A refund may not be made if the amount of annual rental due and paid exceeds the amount of the production royalty.
- (4) A new mining operation is not exempt from production royalties.

11 AAC 86.763. Holder defined

(a) As used in [11 AAC 86.760](#) - [11 AAC 86.796](#), a "holder" or a "holder of a mining claim, leasehold location, or mining lease" is a person engaged in one or more of the following activities in the state, and includes a person who is temporarily exempt from taxation under [AS 43.65.010\(a\)](#):

- (1) owning and operating a mining property;
- (2) owning a mining property and receiving lease or royalty payments based on production from the property;
- (3) leasing a mining property from another person and operating the property;

(4) possessing a mineral interest, whether an economic or a production interest, in a producing property, including royalty, working or operating interests, net profits, overriding royalties, carried interests, and production payments.

(b) There may be more than one holder of a mining claim, leasehold location, or mining lease. For example, if the owner of a mining claim leases the mining claim to another person, both the owner and lessee are holders under this section.

11 AAC 86.766. Segregation

(a) The holder may segregate gross income, deductions, and expenses using any one of the three methodologies described in (b) - (d) of this section. (b) Separate or Traced Accounting of Minerals, Income, Deductions, and Expenses. If the holder traces every item of income, deductions, and expenses to either minerals produced from state land or minerals produced from non-state land, then only income, deductions, and expenses traced to minerals produced from state land shall be used in calculating the production royalty. If the holder mines the same mineral from both state and non-state land, income will be treated as traced income only if the holder:

- (1) maintains separate operations and separate books, maintained in conformance with generally accepted accounting principles, for mining on state land and on non-state land; or
- (2) contemporaneous with mining, records the amount of raw mineral mined from state land, the amount of raw mineral mined from non-state land, and the corresponding grades of such raw material, and, contemporaneous with sale, records the corresponding income from the minerals mined.

(c) Actual Income with Proportionate Deductions and Expenses. If the holder has jointly developed state land and non-state land as a single mining operation and, contemporaneous with mining, records the amount of raw mineral mined from state land, the amount of raw mineral mined from non-state land, and the corresponding grades of such raw material and, contemporaneous with sale, records the corresponding income from the mineral mined, then the holder may segregate income from state land and non-state land on that basis. For purposes of calculating production royalties under this subsection, deductions and expenses shall be proportionate to income. Deductions for state land shall equal gross income from state land multiplied by total deductions for both state and non-state land, then divided by gross income from both state and non-state land. Expenses for state land shall equal gross income from state land multiplied by total expenses for both state and non-state land, then divided by gross income from both state and non-state land.

(d) Apportionment of Gross Income, Deductions, and Expenses Based on Volume or Tonnage. If the holder has jointly developed state land and non-state land as a single mining operation, gross income, deductions, and expenses may be apportioned on the basis of the gross income per cubic yard or ton of ground mined that calendar year. Gross income from state land shall equal the number of cubic yards or tons of state ground mined multiplied by the gross income from both the state and non-state land, then divided by the number of cubic yards or tons of both state and non-state ground mined. Deductions for state land shall equal the number of cubic yards or tons of state ground mined multiplied by the deductions for both the state and non-state land, then divided by the number of

cubic yards or tons of both state and non-state ground mined. Expenses for state land shall equal the number of cubic yards or tons of state ground mined multiplied by the expenses for both the state and non-state land, then divided by the number of cubic yards or tons of both state and non-state ground mined.

(e) Repealed 8/26/98.

(f) A holder of separate mining operations may select any one of the methodologies set out in (b) - (d) of this section for each mining operation.

(g) A holder who elects to segregate income using one of the methodologies described in this section may not change methodologies after May 1, 1992 without the written consent of the director. Consent may not be given without an extraordinary change in circumstances that makes the methodology initially selected wholly inappropriate or impossible to use. An application for consent to change methodologies must be filed before the last day of the calendar year for which the change is sought. The director shall grant, modify, or deny the application within 90 days after filing.

11 AAC 86.769. Production royalty payments and returns

(a) Production royalty returns must be prepared and submitted on forms available from the division. Completed returns and payments must be submitted to the department office in Anchorage or Fairbanks.

(b) Production royalty returns must be filed for each year after 1989 in which production occurs, or minerals produced from state land are sold, exchanged, or otherwise disposed of; returns are not otherwise required.

(c) Production royalty returns and payments are due every year on May 1 for the preceding calendar year.

(d) Upon written request, the division may grant an extension of time to file a production royalty return and to pay the royalty payment. The written request must be received by the division no later than 10 days before the due date set in (c) of this section. The written request must include a complete statement of the reasons for the request. An extension of time may not exceed 120 days. Interest accrues on the unpaid balance of a royalty payment during the term of an extension.

11 AAC 86.772. Interest on unpaid royalties; deficient payments

(a) Interest accrues from the due date set in [11 AAC 86.769\(c\)](#) on the outstanding balance of any production royalty not paid in full when due. This interest accrues at the legal rate of interest in the State of Alaska, as specified in [AS 45.45.010\(a\)](#), until the outstanding balance is paid in full.

(b) If the division discovers that a production royalty payment is deficient, the division shall send the holder of a mining claim, leasehold location, or mining lease a deficiency notice by certified mail, return receipt requested. The deficiency notice must comply with [11 AAC 88.140](#), and must

- (1) state the amount of the deficiency, if known;
- (2) state the rate at which interest accrues on the deficiency;
- (3) inform the holder that it has 60 days after the date on the notice to pay in full the total of the deficiency plus interest; and
- (4) inform the holder that failure to pay the total of the deficiency plus interest within 60 days is an abandonment of the holder's claim, leasehold location, or mining lease

unless the holder, under [11 AAC 86.778](#), contests the deficiency notice before expiration of the 60-day period.

11 AAC 86.775. Books and records

The holder must keep its books and records pertaining to mining income, expenses, and deductions for no less than six years after the calendar year to which they relate. Books and records for both mining on state land and mining in Alaska on non-state land must be kept as required by this section. The books and records must be available for inspection and copying by authorized representatives of the state. If the office in which the books and records are kept and maintained is not readily accessible to the authorized representatives of the state, the books and records, upon request, must be produced at the state office designated by the state representative.

11 AAC 86.776. Confidentiality

The financial information contained in the production royalty returns filed by a holder, and the books and records produced by the holder, shall be held confidential upon the written request of the holder, except that the following information may be made available to the public:

- (1) the holder's name;
- (2) the quantity of mineral mined from each location;
- (3) the net income reported, or which should have been reported, by ADL number or in total;
- (4) the existence and nature of a dispute between a holder and the division over production royalty accounting or payment; and
- (5) information relevant to litigation in which the state claims underpayment or nonpayment of production royalties.

11 AAC 86.778. Contesting notice of deficiency

(a) A holder who wishes to protest a deficiency notice issued under [11 AAC 86.772\(b\)](#) shall file a written protest with the department. To preserve the holder's rights and to receive consideration by the department, this written protest must

- (1) be personally delivered or mailed by certified mail, return receipt requested, to either the Anchorage or Fairbanks office of the department;
- (2) be received by the department within 60 days after the date on the notice of deficiency;
- (3) state the departmental action the holder is protesting, the relief sought, and the ADL numbers affected;
- (4) state the grounds for the holder's protest, including the facts at issue, the legal authority relied upon, and any generally accepted accounting principles that support the holder's protest; and
- (5) state whether the holder wants an informal conference or waives that right in favor of a formal hearing.

(b) A holder may be represented or assisted by an attorney, certified public accountant, or other representative at the informal conference and the formal hearing.

11 AAC 86.781. Informal conferences

(a) Unless the holder waives the right to an informal conference, upon receipt of the holder's written protest under [11 AAC 86.778](#) the department will designate a conference officer who will promptly schedule the informal conference with the holder. A holder wishing to present facts and financial information in support of its position

must bring all pertinent books, records, and other documents to the conference or must make them readily available for examination by the conference officer. The conference officer may copy any of the books, records, and other documents brought to the conference or made available for the conference officer's examination.

(b) A holder whose protest turns solely on one or more findings of material fact and who has waived its right to an informal conference in favor of a formal hearing, may be required to attend an informal conference before going to a formal hearing if the department believes the disagreement over material facts can be resolved at the conference level.

(c) After considering the facts, financial information, and arguments presented by the holder at the informal conference, the officer will make a recommendation to the department. The conference officer is not authorized to compromise or waive the production royalty payment that is protested by the holder; however, upon a conference officer's recommendation that a correction of the department's original action is warranted, the department will make the recommended correction if it decides that the action is appropriate and will promptly notify the holder in writing of its decision and of the correction. In all other cases, the department will make a decision on the conference officer's recommendation and will notify the holder in writing of the decision.

(d) A holder who is dissatisfied with the department's decision under (c) of this section and who wishes to continue its protest in the matter shall, within 30 days after the date on the department's notice of its decision on the conference officer's recommendation, file a written request, as described in [11 AAC 86.784\(b\)](#), for a formal hearing before the department. Failure to timely file a request waives the holder's right to further consideration of its protest before the department.

(e) A decision under (c) of this section is not a final administrative determination of the holder's protest by the department.

11 AAC 86.784. Formal hearings

(a) The department will hold a formal hearing for a holder if

(1) the holder timely files a protest fulfilling the requirements of [11 AAC 86.778\(a\)](#), waiving the right to an informal conference in favor of a formal hearing;

(2) within 30 days after the date on the department's notice under [11 AAC 86.781\(c\)](#) of its decision on the conference officer's recommendation regarding that holder's protest, the holder files a written request for a formal hearing which fulfills the requirements of (b) of this section; or

(3) under the facts and circumstances of a particular case it appears appropriate to the department to conduct a formal hearing.

(b) A holder's request to continue its protest at a formal hearing after the department's decision under [11 AAC 86.781](#)

(c) regarding that protest must be in writing and must

(1) be personally delivered or mailed by certified mail, return receipt requested, to either the Anchorage or Fairbanks office of the department;

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

(3) state the grounds for the holder's protest, including the facts remaining at issue, the legal authority relied upon, and any generally accepted accounting principles that support the holder's protest.

(c) Following receipt of the holder's request for a formal hearing, the department will appoint a hearing officer to preside over that hearing. Notice of the appointment of the hearing officer will be mailed to the holder by certified mail. Within 15 days after the date on the notice, the holder may reject the hearing officer. A holder may exercise its right to reject a hearing officer only once.

(d) On the hearing officer's own motion or at the request of the holder or of the division, the hearing officer may order that a prehearing conference be scheduled for the purpose of narrowing issues or establishing a schedule for the discovery or production of evidence, for submission of briefs, or for stipulation of facts.

(e) The formal hearing will be scheduled as early as possible at an office of the department nearest the holder's place of business or at another time and place acceptable to the department and the holder.

(f) At the hearing, the holder has the burden of proving its protest by a preponderance of the evidence. At the hearing, both the holder and the department's representative may introduce into evidence materials relevant to a determination of the merit of the protest; however, redundant materials, even though relevant, may be excluded by the hearing officer.

(g) After the hearing, the hearing officer shall prepare a written recommendation, specifying the hearing officer's findings of fact and conclusions of law. Upon approval by the commissioner, the written recommendation of the hearing officer becomes the final decision of the department. If the commissioner disagrees with the recommendation of the hearing officer, the commissioner will issue a decision, supported by findings of fact and conclusions of law, which includes a discussion of the reasons the hearing officer's recommendation is not acceptable.

11 AAC 86.787. Appeals

The commissioner's decision under [11 AAC 86.784](#) is a final administrative order for purposes of appeal to court. No further appeal to the commissioner or petition for the commissioner's reconsideration is available. A holder who disagrees with the decision of the commissioner under [11 AAC 86.784](#) may appeal the decision to a court having jurisdiction to hear such appeals as provided in [AS 44.62.560](#) and [AS 44.62.570](#).

11 AAC 86.790. Abandonment; suit to collect payment

(a) The department will consider that the holder of a mining claim, leasehold location, or mining lease has abandoned to the state all rights acquired under that state mining claim, leasehold location, or mining lease if the holder

(1) fails to file a production royalty return when due; or

(2) does not pay a portion of the production royalty when the payment is due and thereafter does not, within 30 days of receipt of a certified notice of abandonment, pay the total amount that is due.

(b) If the holder of more than one state mining claim, leasehold location, or mining lease timely files a production royalty return and timely pays in full a production royalty payment for one or more but not all of that holder's mining claims, leasehold locations, or mining leases, only those mining claims, leasehold locations, and mining leases for which the holder failed to timely file a production royalty report or failed to timely pay at least a portion of the production royalty payment are subject to abandonment

under this section. If the division cannot readily determine the allocation of a production royalty payment to the holder's various mining claims, leasehold locations, or mining leases on which the holder failed to report or pay, all the holder's mining claims, leasehold locations, and mining leases in production during that calendar year are considered abandoned.

(c) If a production royalty payment is deficient but is otherwise timely paid, the holder of a mining claim, leasehold location, or mining lease is considered to have abandoned the mining claim, leasehold location, or mining lease unless

(1) the holder pays the deficiency, plus interest, within 60 days after the date on the deficiency notice required by [11 AAC 86.772\(b\)](#);

(2) the holder, after protest of the deficiency under [11 AAC 86.778](#), pays the amount determined to be due at the conclusion of an informal conference conducted under [11 AAC 86.781](#) or, if the protest was continued, within 30 days after the date on the notice of the department's decision under [11 AAC 86.784\(g\)](#); or

(3) the holder, after appeal under [11 AAC 86.787](#), pays the amount adjudicated to be due within 30 days after final non-appealable judgment.

(d) If an abandonment is considered to have occurred under this section, the division shall post at the Anchorage and Fairbanks offices of the division, and record in the recording district in which the mining claim, leasehold location, or mining lease is located, a notice of abandonment. This notice must

(1) identify the mining claim, leasehold location, or mining lease;

(2) state the basis on which the mining claim, leasehold location, or mining lease is considered abandoned; and

(3) be signed by a representative of the division.

(e) For purposes of abandonment of any mining claim, leasehold location, or mining lease, the owner of record with the division as of the last day of the calendar year has the primary responsibility of assuring that all holders with interests in the mining claim, leasehold location, or mining lease at any time during that calendar year timely report and pay in full the production royalties due. Should any holder of an interest in that mining claim, leasehold location, or mining lease fail to timely file its production royalty report and pay in full the production royalties when due, all interests in the mining claim, leasehold location, or mining lease, except those of the state, are subject to abandonment to the state under [11 AAC 86.760](#) - [11 AAC 86.796](#). To avoid abandonment, the owner of record or any other holder may timely file and pay in full the production royalties due from a holder of an interest in the mining claim, leasehold location, or mining lease.

(f) In addition to considering a mining claim, leasehold location, or mining lease to be abandoned, the division may file suit to collect a production royalty payment, if the production royalty payment was not paid or was deficient or a production royalty return was not filed when due.

11 AAC 86.793. Relocation

(a) A mining claim, leasehold location, or mining lease that has been abandoned under [11 AAC 86.790](#) is subject to relocation by another after the date on which notice of abandonment is posted at both the Anchorage and Fairbanks offices of the division under [11 AAC 86.790\(d\)](#).

(b) A holder or locator of an abandoned mining claim, leasehold location, or mining lease may not relocate the

abandoned location until one year after notice of abandonment is posted at both the Anchorage and Fairbanks offices of the division under [11 AAC 86.790\(d\)](#).

11 AAC 86.796. Definitions

As used in [11 AAC 86.760](#) - [11 AAC 86.796](#),

(1) "**ADL**" means the Alaska Division of Lands in the department;

(2) "**department**" means the Department of Natural Resources;

(3) "**director**" or "division" means the director or division delegated the authority of the director of lands in the department;

(4) "**gross income**" means gross income as defined in [15 AAC 65.110](#);

(5) "**person**" means the same as in [AS 01.10.060](#);

(6) "**produced mineral**" or "**mineral produced**" means any mineral or raw material extracted or leached in-situ from the surface or subsurface and removed from the mining claim, leasehold location, or mining lease from which it was extracted or leached in-situ; "produced mineral" or "mineral produced" does not include any mineral produced as a result of taking a sample or bulk sample; for purposes of this paragraph, "bulk sample" has the meaning given in [15 AAC 65.990](#), and the definition of "**bulk sample**" in that section, as revised as of August 1, 2001, is adopted by reference;

(7) "**ton**" means 2,000 pounds.

Mineral Leasing Administrative Regulations

Title 11: Natural Resources

Chapter 82: MINERAL LEASING PROCEDURE

Article 7

Royalty Products

11 AAC 82.700. Taking royalty in-kind for royalty products other than oil, gas, or associated substances

Royalty products other than oil, gas, or associated substances taken in-kind as provided by [AS 38.05.182](#) must be taken under the provision of the lease which reserves the royalty to the state. If no such provision is in the lease or in the regulations dealing with the products to be taken, 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; however, if the portion of the state's share to be taken in-kind exceeds 50 percent of the state's share, 180 days notice will be given;

(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) from 10 percent to 50 percent, upon 90 days written notice; and

(C) more than 50 percent, upon 180 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.

11 AAC 82.705. Bidding method for royalty products other than oil, gas, or associated substances

Royalty products, other than oil, gas, or associated substances, that the commissioner determines are to be sold by competitive bid will be offered for sale by sealed bid or at public auction.

11 AAC 82.710. Notice of sale for royalty products other than oil, gas, or associated substances

If the commissioner determines that royalty products other than oil, gas, or associated substances will be offered for competitive sale, notice of the sale will be given as provided by [AS 38.05.945](#). The notice must specify all the terms and conditions of the sale including the royalty products to be sold, bidding method, bond requirements, sale place and time, minimum bid, if prescribed, and any other term or condition that the commissioner determines necessary to carry out the purposes of [AS 38.05.183](#).

11 AAC 82.715. Qualifications for royalty products other than oil, gas, or associated substances

A purchaser of the state royalty products other than oil, gas, or associated substances must comply with the qualification requirements of [11 AAC 82.200](#) and must supply the showing of qualification required of mineral permittees and lessees by [11 AAC 82.205](#).

Section VII: Mining License Tax

Title 43: Revenue and Taxation

Chapter 43.65: MINING LICENSE TAX

Sec. 43.65.010. Mining license.

(a) A person prosecuting or attempting to prosecute, or engaging in the business of mining in the state shall obtain a license from the department. All new mining operations are exempt from the tax levied by this chapter for three and one-half years after production begins.

(b) The Department of Natural Resources shall certify to the department the date upon which production begins, and the department shall issue a certificate of exemption to the producer accordingly.

(c) The license tax on mining is as follows: upon the net income of the taxpayer from the property in the state, computed with allowable depletion, plus royalty received in connection with mining property in the state

Amount Earned	Tax Owed
Under \$40,000	0%
Over \$40,000 and not over \$50,000	3%
Over \$50,000 and not over \$100,000	\$1,500 plus 5% of the excess over \$50,000
Over \$100,000	\$4,000 plus 7% of the excess over \$100,000

(d) Where mining operations are conducted in two or more places by one person the operations are considered a single mining operation and the tax under this chapter is computed upon the aggregate income derived from all the mining operations. The lessor of a mine operated under a lease is considered to be engaged in mining within this chapter, and the royalties received by the lessor are considered to be the net income of the lessor's mining operations. If the lessor receives royalties from more than one mine or mining operation, the tax payable under this chapter by the lessor is computed upon the aggregate royalties received by the lessor from all the mines or mining operations as though they were a single mining operation.

(e) The allowance for depletion included as an allowable deduction from gross income is a percentage of the gross income from the property during the taxable year, excluding from the gross income an amount equal to the rents or royalties paid by the taxpayer in respect to the property, as follows:

(1) coal mines: 10 percent;

(2) metal mines, fluorspar, flake graphite, vermiculite, beryl, feldspar, mica, talc, lepidolite, spodumene, varite, ball and sagger clay, or rock asphalt mines and potash mines or deposits: 15 percent; and

(3) sulphur mines or deposits: 23 percent.

(f) The allowance for depletion may not exceed 50 percent of the net income of the taxpayer, computed without allowance for depletion, from the property, except that in no case may the depletion allowable be less than it would be if computed on a reasonable cost basis.

(g) Deductions that are not directly attributable to particular properties or processes shall be fairly allocated. To illustrate: If the taxpayer engages in activities in addition to mineral extraction in the state and to ordinary treatment processes, deductions for depreciation, taxes, general expenses, and overhead, which cannot be directly attributed to a specific activity, shall be fairly apportioned between

(1) the mineral extraction and ordinary treatment processes, and

(2) the additional activities, taking into account the ratio which the operating expenses directly attributable to the mineral extraction and ordinary treatment processes bear to the operating expenses directly attributable to the additional activities. If more than one mineral property is involved, the deductions apportioned to the mineral extraction and ordinary treatment processes shall, in turn, be fairly apportioned to the several properties taking into account their relative production.

(h) Taxes upon royalties shall be paid by the taxpayer receiving the royalties and no deduction, excepting depletion, is allowed.

(i) A license issued under this section must include

(1) the name and address of the licensee;

(2) the nature or type of mining activity to be conducted; and

(3) the year for which the license is issued.

Sec. 43.65.018. Mining business education credit.

(a) A person engaged in the business of mining in the state is allowed a credit against the tax due under this chapter for cash contributions accepted for

(1) direct instruction, research, and educational support purposes, including library and museum acquisitions, and contributions to endowment, by an Alaska university foundation or by a nonprofit, public or private, Alaska two-year or four-year college accredited by a regional accreditation association;

(2) secondary school level vocational education courses, programs, and facilities by a school district in the state;

(3) vocational education courses, programs, and facilities by a state-operated vocational technical education and training school;

- (4) a facility or an annual intercollegiate sports tournament by a nonprofit, public or private, Alaska two-year or four-year college accredited by a regional accreditation association;
 - (5) Alaska Native cultural or heritage programs and educational support, including mentoring and tutoring, provided by a nonprofit agency for public school staff and for students who are in grades kindergarten through 12 in the state;
 - (6) education, research, rehabilitation, and facilities by an institution that is located in the state and that qualifies as a coastal ecosystem learning center under the Coastal America Partnership established by the federal government; and
 - (7) the Alaska higher education investment fund under [AS 37.14.750](#).
- (b) The amount of the credit is
- (1) 50 percent of contributions of not more than \$100,000;
 - (2) 100 percent of the next \$200,000 of contributions; and
 - (3) 50 percent of the amount of contributions that exceed \$300,000.
- (c) Each public college and university shall include in its annual operating budget request contributions received and how the contributions were used.
- (d) A contribution claimed as a credit under this section may not
- (1) be the basis for a credit claimed under another provision of this title; and
 - (2) when combined with contributions that are the basis for credits taken during the taxpayer's tax year under [AS 21.96.070](#), [21.96.075](#), [AS 43.20.014](#), [AS 43.55.019](#), [AS 43.56.018](#), [AS 43.75.018](#), or [AS 43.77.045](#), result in the total amount of the credits exceeding \$5,000,000; if the taxpayer is a member of an affiliated group, then the total amount of credits may not exceed \$5,000,000 for the affiliated group; in this paragraph, "**affiliated group**" has the meaning given in [AS 43.20.145](#).
- (e) The credit under this section may not reduce a person's tax liability under this chapter to below zero for any tax year. An unused credit or portion of a credit not used under this section for a tax year may not be sold, traded, transferred, or applied in a subsequent tax year.
- (f) In this section,
- (1) "**school district**" has the meaning given in [AS 43.20.014](#);
 - (2) "**vocational education**" has the meaning given in [AS 43.20.014](#).

Sec. 43.65.019. Alaska veterans' memorial endowment fund contribution credit. [Repealed, Sec. 25 ch 46, SLA 2002].
Repealed or Renumbered

Sec. 43.65.020. Taxpayer's duties.

- (a) A person subject to tax under this chapter shall make a return stating specifically the items of gross income from the property, including royalty received and the deductions and credits allowed by this chapter and the exploration incentive credit authorized by [AS 27.30](#), and other information for carrying out this chapter that the department prescribes. The return must show the mining license number and must be signed by the taxpayer or an authorized agent of the taxpayer, under penalty of unsworn falsification in the second degree. If receivers, trustees, or assigns are operating the property or business, they shall make returns for the person engaged in mining, or the recipient of royalty in connection with mining property. The tax due on the basis of the returns shall be collected in the same manner as if collected from the person of whose business they have custody and control. In a tax year in which a taxpayer applies against the tax levied under this chapter the exploration incentive credit authorized by [AS 27.30](#), the commissioner shall require the taxpayer to submit the accounting of mining operation activities form required by [AS 27.30.030\(b\)](#).
- (b) A return made on the basis of the calendar year shall be made before May 1 of the next year. A return made on the basis of a fiscal year shall be made before the first day of the fifth month of the next fiscal year.
- (c) The department may grant a reasonable extension of time for filing returns, under regulations adopted by it. Except in the case of a taxpayer going abroad, an extension may not be made for more than six months.
- (d) A taxpayer's return shall be made to the department at Juneau. A taxpayer shall make a return either on a calendar year or fiscal year basis, in conformance with the basis used in making the taxpayer's return for federal income tax purposes.
- (e) The total amount of tax imposed by this chapter shall be paid on the 30th day of April of the next calendar year, or, if the return is made on the basis of the fiscal year, then on the last day of the fourth month of the next fiscal year.
- (f) Every person prosecuting or attempting to prosecute or engaging in the business of mining in the state shall comply with the department's regulations and shall keep such records, give such statements under oath, and make such returns as the department prescribes.
- (g) When the department considers it necessary, it may require a person, by notice served upon the person, to make a return, give statements under oath, or keep records as it considers sufficient to show whether or not the person is liable to tax under this chapter. If a person fails to file a return at the time prescribed by law or regulation, or makes, wilfully or otherwise, a false or fraudulent return, the department shall make the return from its own knowledge and from such information as it can obtain through testimony or otherwise. A return so made and subscribed by the department is prima facie good and sufficient for all legal purposes.

Sec. 43.65.030. Application for renewals.

Application for renewal of a mining license shall be made before May 1 of each year.

Sec. 43.65.040. Limitation. [Repealed, Sec. 4 ch 94 SLA 1976. For current law, see [AS 43.05.260](#)]. Repealed or Renumbered

Sec. 43.65.050. Violations and penalties. [Repealed, Sec. 4 ch 94 SLA 1976; Sec. 3 ch 166 SLA 1976; Sec. 45, 46 ch 113 SLA 1980. For current law, see AS 43.05.220 and 43.05.290]. Repealed or Renumbered

Sec. 43.65.060. Definitions.

In this chapter, unless the context otherwise requires,

- (1) "**gross income** from property" means the gross income from mining in the state;
- (2) "**mining**" means an operation by which valuable metals, ores, minerals, asbestos, gypsum, coal, or stone, or any of them are extracted, mined, or taken from the earth; "mining" includes the ordinary treatment processes normally applied by mine owners or operators to obtain the commercially marketable product, but does not include the extraction or production of oil and gas, marketable earth, quarry rock, or sand and gravel;
- (3) "**net income of the taxpayer (computed without allowances for depletion) from the property**" means the gross income from the property, less allowable deductions attributable to the mineral property upon which the depletion is claimed and the allowable deductions attributable to ordinary treatment processes insofar as they relate to the product of the property, including overhead and operating expenses, development costs properly charged to expense, depreciation, taxes, losses sustained, etc., but excluding allowances for depletion, and deductions for federal income taxes, or for the tax imposed by this chapter;
- (4) "**new mining operations**" means mining operations which began production after January 1, 1953, or which have not been liable to pay a mining license tax under this chapter on net income since January 1, 1948;
- (5) "**ordinary treatment processes**" includes
 - (A) in the case of coal: cleaning, breaking, sizing, and loading for shipment,
 - (B) in the case of sulphur: pumping to vats, cooling, breaking, and loading for shipment,
 - (C) in the case of iron ore, bauxite, ball and sagger clay, rock asphalt, and minerals which are customarily sold in the form of crude mineral product: sorting, concentrating, and sintering to bring to shipping grade and form, and loading for shipment, and
 - (D) in the case of lead, zinc, copper, gold, silver, platinum metals or fluorspar ores, potash and ores which are not customarily sold in the form of the crude mineral product: crushing, grinding, and beneficiation by concentration (gravity, flotation, amalgamation, electrostatic, or magnetic), cyanidation, leaching, crystallization, precipitation (but excluding electrolytic deposition roasting, thermal or electric smelting or refining), or by substantially equivalent processes or combination of processes used in the separation or extraction of a product from the ore, including the furnacing or quicksilver ore;
- (6) "**production**" means the date on which the initial shipment of products from mining operations is made.

Section VII: Mining License Tax

Title: Revenue and Billing **Chapter 65: Mining License Tax**

Article 1 **Licensing and Filing Requirements**

15 AAC 65.010. When license is required

(a) Except as provided in (b) of this section, a person engaged in one or more of the following activities in the state is in the business of mining and shall obtain a mining license:

- (1) a person owning and operating a mining property;
- (2) a person owning a mining property and receiving lease or royalty payments based on production from the property;
- (3) a person leasing a mining property from another person and operating the property;
- (4) a person possessing a mineral interest, whether an economic or a production interest, in a producing property, including royalty, working or operating interests, net profits, overriding royalties, carried interests, and production payments;
- (5) a person who is temporarily exempt from taxation under [AS 43.65.010\(a\)](#).

(b) The following persons are not in the business of mining and are not required to obtain a mining license:

- (1) a person whose mining activities are restricted to the holding of property for exploration to locate and delineate mineral deposits or for future development;
 - (2) a person who holds mineral interests described in (a)(4) of this section in undeveloped and non-producing properties;
 - (3) a person whose sole mining activity in the state consists of extracting sand, gravel, rock, or fill material from federal, state, or municipal land, if the material is to be used exclusively by that person for public construction projects or for personal use, and is not held for resale.
- (c) A mining license must be obtained for each mining operation conducted in this state. A person owning several mining properties that constitute a single mining operation may apply for one license.

(d) The following examples illustrate when a mining license is required:

- (1) Individuals "A" and "B" form a partnership, AB Company, to develop and mine properties P1, P2, and P3. Property P1 is a fully developed and operating placer mine. Property P2 is a non-producing patented mining claim that the company intends to explore, and property P3 will be a dredging operation but is currently in the developmental stage. "A" and "B", as individuals, are not required to obtain separate licenses so long as neither is receiving a royalty from the producing property. AB Company must obtain separate mining licenses for properties P1 and P3. A license is not required for property P2 because it is not in the developmental or operational stages.
- (2) Corporation D has acquired operating interests in 16 coal leases in various stages of development. All leases are connected geographically and the company produces coal from several of the leases. Individual "E" possesses a royalty interest in one of the producing leases and receives an annual payment from Corporation D. Individual "F" possesses a royalty interest in a non-producing lease that is currently not being developed.

Individual "F" receives an advance royalty from this lease. Corporation D may apply for one mining license to apply to all producing coal leases. Individual "E" must apply for a mining license because "E" is receiving royalties from a producing mining property in the state. Individual "F" must apply for a license when production begins from mining property in which "F" holds an economic interest.

(3) Individual "G" owns and operates property P4, a producing placer mine in southeast Alaska, receives a royalty from property P5, a mineral interest "G" leased to another company, is exploring for minerals on property P6, unpatented state land near Fairbanks, and is developing property P7, a potential placer mine near Anchorage. Individual "G" must obtain a separate license for properties P4, P5, and P7 because each is a separate mining operation and is in either the developmental or operational phase. A license is not required for property P6 because it is in the exploratory phase of development.

15 AAC 65.020. Mining license application and renewal

(a) A person required to obtain a license by [AS 43.65.010](#) and [15 AAC 65.010](#) shall file an application for a license on a form provided by the department, except that a placer miner may file the annual Placer Mining Application. The following information must be provided:

- (1) applicant's name;
 - (2) mailing address;
 - (3) federal employer identification number (EIN) or social security number (SSN);
 - (4) year for which the license is requested;
 - (5) location of operation, i.e., creek, property, recording district;
 - (6) the date on which production first began;
 - (7) the name and address of the owner of the property, if the property is being leased by the applicant;
 - (8) the serial number of the lease or sale, if applicable, as assigned by the Department of Natural Resources;
 - (9) the nature or type of mining activity to be conducted; and
 - (10) other information required by the department.
- (b) Application for an initial mining license must be made on or before the time the mining operation enters the developmental phase.
- (c) A license expires on April 30 of each year and must be renewed by filing a renewal application before May 1, on a form provided by the department.
- (d) Upon receipt of an application, the department will issue a mining license to the applicant.

15 AAC 65.030. Returns

- (a) Except as provided in (c) of this section, each license holder, including a license holder temporarily exempt from taxation under [AS 43.65.010\(a\)](#), shall file a mining license return on a form provided by the department. A person receiving gross income from more than one licensed mining property shall report that income on a single return.
- (b) For each person required to file a return, the mining license tax year is the same as that person's tax year for federal income tax purposes. The mining license return must be filed before the first day of the fifth month following the end of the applicable tax period.
- (c) Each joint venture member which was elected not to be treated as a partnership for purposes of sec. 761 of the Internal Revenue Code 26 U.S.C. 761 may include its share of joint venture income and expenses on its separate mining license return.

15 AAC 65.040. Extensions

- (a) Upon application, the department will, in its discretion, grant an extension of time to file a mining license return.
- (b) An application for an extension of time for filing a return must be filed with the department no later than the date the return is due, and must include a complete statement of the reasons for the request for an extension. A copy of the approved extension request must be filed with the mining license tax return.
- (c) An extension of time for filing the return does not extend the time for payment of the total amount of tax due.

Article 2 Computation of Tax

15 AAC 65.100. Taxable income

For the purpose of computing the mining license tax due, taxable income is gross income as defined by 15 AAC 65.110 less deductible mining expenses as defined by 15 AAC 65.120 and 15 AAC 65.125.

15 AAC 65.110. Gross income

- (a) A person's gross income from a mining property in the state equals the sum of
- (1) sale price or value actually received, including cash, credits, in-kind exchanges, and other valuable consideration for the mined materials;
 - (2) advance royalty payments received; however, advance payments may not be included in gross income until the tax year in which the mined material to which the payments relate is actually extracted;
 - (3) production payments retained in a lease; and
 - (4) other royalty payments received from mining properties in the state, including royalty payments received in kind; if the payment is in kind, gross income includes the fair market value of the mined material on the date that payment is received.
- (b) For the purposes of this section, the sales price of
- (1) mined material sold in the state to an affiliate of the person is the greater of
 - (A) the cash value of the consideration given for the materials sold;
 - (B) the price attributable to the sale as entered on the person's books and records in accordance with generally accepted accounting principles; or
 - (C) fair market value;
 - (2) the person's inventory of mined material, retained by and put to personal use by the person, or transferred from the mining division to another division within the same corporate entity, is the greater of
 - (A) the price attributable to the mining division for the material as entered on the person's books and records in accordance with generally accepted accounting principles, or
 - (B) fair market value.
- (c) If a person is engaged in a mining operation in the state and mined materials are commingled with non-mining materials to form a refined product such as asphalt paving, concrete, or jewelry, gross income includes the fair market value of the mined materials after they are mined and subjected to ordinary treatment processes but before incorporation into the finished product.
- (d) If a person transports mined materials and products containing mined materials out of state before sale of the materials or products, gross income includes the fair market

value of the materials before their exportation in the tax year exported, whether or not the mined materials are sold during that tax year.

(e) For the purpose of this section, "fair market value" must be determined by one of the following methods, except that, if fair market value cannot be fairly determined by the use of these methods, the person may request, or the commissioner will, in his or her discretion, require, the use of another method acceptable to the commissioner:

(1) Fair market value may be computed by using the representative market or field price of materials after they are mined and subjected to ordinary treatment processes. "Representative market or field price" is the competitive sales price for ores or minerals of like kind and grade. If no Alaska market exists for a mined material, the representative market or field price is the United States or world market price for a similar kind and grade of resource.

(2) Fair market value may be computed by deducting from the out-of-state sales price of Alaska mined materials the

- (A) ordinary and necessary costs incurred to apply non-mining processes to the mined materials before sale;
- (B) ordinary and necessary costs incurred to transport the mined materials from the point of completion of ordinary treatment processes to its destination before sale;
- (C) ordinary and necessary costs incurred out-of-state in further processing the mined materials to produce a marketable product; and
- (D) out-of-state sales expense and other administrative costs incurred to bring the mined materials to the point of sale.

15 AAC 65.120. Deductible mining expenses; inventory costs

- (a) Except for a person permitted to compute federal net income using the cash basis method, a person shall inventory the costs of production in the state and deduct those costs at the time of sale, the time of export, or the time when the value of the mineral product is included in gross income for the purpose of calculating the mining license tax.
- (b) In order to reflect mining net income accurately, both direct and indirect mining expenses must be included in the computation of costs to be inventoried, in a manner consistent with the person's federal income tax records, if the records are kept in a method consistent with generally accepted accounting principles and are consistent from year to year. Mining costs must be allocated to the product extracted during the tax year, whether sold during the tax year or in inventory at the close of the taxable year. Costs that must be accounted for in inventory include:
- (1) direct mining expenses that are costs incident and necessary to the extraction of mined materials and ordinary treatment processes, including
 - (A) direct labor costs that are specifically identified or associated with particular units of mined materials;
 - (B) mine costs incurred in severing and extracting the materials from the mine, pit, or ground;
 - (C) maintenance and repair of mining equipment and facilities directly associated with the mine operation and ordinary treatment processes;
 - (D) supplies used in the mining operation and ordinary treatment processes;

(E) payments made to holders of economic interests in the mining property, including royalties, production payments and net profits;

(F) depreciation on mining equipment, buildings, and other facilities engaged directly in extraction and ordinary treatment processes, computed in accordance with [15 AAC 65.125\(f\)](#);

(G) depletion as calculated in accordance with [15 AAC 65.125\(d\)](#) and (e);

(H) costs associated with transporting the mined materials through completion of ordinary treatment processes, except transportation costs to transport the resource out of the state.

(2) indirect mining expenses that are costs incident and necessary to extraction and ordinary treatment processes other than direct mining costs, including:

(A) insurance;

(B) general administrative and office expenses;

(C) rent;

(D) utilities;

(E) repair expenses;

(F) losses relating to casualty or theft to the extent uncompensated by insurance;

(G) employee benefits;

(H) taxes paid on Alaska operations, including severance, property, sales, use, and excise taxes.

(c) If two or more properties are involved, indirect expenses allowed under [15 AAC 65.120\(b\)\(2\)](#) must be allocated between the properties, based upon the ratio of each property's production during the tax year to the person's total production from the properties.

15 AAC 65.125. Deductible mining expenses; other expenses; depletion

(a) Other expenses that cannot be inventoried are deductible when paid or accrued. These expenses must be allocated in accordance with (b) of this section, and include:

(1) except as provided in (2) and (3) of this subsection, interest expense paid or accrued in connection with the mining operation is deductible as a current operating expense;

(2) construction period interest expense, including all interest paid or accrued in connection with depreciable property to be used in the mining operation in the state, is to be capitalized and recovered through depreciation or amortization in accordance with the person's election for federal income tax purposes;

(3) interest expense paid or accrued by a consolidated business in connection with the mining operation in the state is deductible as follows:

(A) 100 percent of the interest on specific new borrowings made with the purpose, expressed at the time of the borrowing, of financing the mining operation in the state; specific new borrowings may not exceed the amount of accumulated expenditures made for fixed capital and working capital to finance the mining operation in the state;

(B) if no specific new borrowing is made to finance the mining operation in the state, the interest deduction may not exceed a portion of the total interest paid or accrued by the consolidated business; that portion is determined by multiplying the total interest by a fraction, the numerator of which is the cost of the taxpayer's real and tangible personal property in the state and the denominator of which is the cost of all real and tangible personal property of the business; in

this subparagraph, "total interest paid or accrued by the consolidated business" does not include interest expense arising from intercompany obligations within the consolidated business except to the extent that the interest expense reflects a pass-through of interest on a third-party borrowing by the parent or other member of the consolidated business;

(4) advertising expenses;

(5) Alaska corporate net income tax;

(6) salaries paid to officers and others for the performance of services that are incident and necessary to the person's business activities as a whole rather than to extraction and ordinary treatment processes;

(7) other expenses that are incident and necessary to the person's business activities as a whole rather than to extraction and ordinary treatment processes.

(b) For the purpose of expense allocation under (a) of this section,

(1) interest expense and taxes allowed under (a)(1) of this section are deductible to the extent that they relate to a person's mining activity in the state and are determined by multiplying total expenses by a fraction, the numerator of which is the person's direct mining expenses in the state and the denominator of which is the person's total direct expenses related to both mining and non-mining activities in the state;

(2) the expenses allowed under (a)(4) - (7) of this section are deductible to the extent they relate to mining activities in the state and are determined by multiplying the total expenses by a fraction, the numerator of which is the person's direct mining expenses in the state and the denominator of which is the person's total direct expenses related to both mining and non-mining activities.

(c) While a mining property is in the development stage, all development expenditures in excess of net income from the sale of mined materials must be included in the mine's basis and are recoverable through the depletion allowance.

Development expenses incurred after the mine has reached the production stage are deductible as a current operating cost. The mine is considered to have passed from a development to a production stage when the principal activity of the mining property becomes the production of ore from the property rather than the development of the ore body before production.

(d) A deduction for depletion may be taken by a person for each economic interest held in an Alaska mining property; an economic interest is held when a person has acquired by investment any interest in a mineral in place and that person derives, under any form of legal relationship, income from the extraction of the mineral, to which the person must look for a return of capital.

(e) A percentage depletion allowance is permitted for each property described in [AS 43.65.010\(e\)](#), if the allowance is not less than if it were computed on a cost basis. If computed on a percentage basis, the depletion allowance may not exceed 50 percent of the person's mining net income as computed without the allowance for depletion. Cost depletion must be used for all other mineral types not described in [AS 43.65.010\(e\)](#), including sand and gravel.

(f) In computing mining taxable income, depreciation expense on all mining equipment, buildings, and other facilities located in Alaska, is allowed as a deduction. A property's basis for computing depreciation is the adjusted basis of the asset for federal income tax purposes on the date the asset is placed in service in Alaska. Depreciation on

mining assets may be computed using any of the methods allowed under secs. 167 and 168 of the Internal Revenue Code (26 U.S.C. 167 and 168). In place of the depreciation expense deduction, a person may elect to amortize the cost of pollution control facilities used in the mining operation in accordance with sec. 169 of the Internal Revenue Code (26 U.S.C. 169).

(g) Exploration costs, federal income taxes, taxes under this chapter, losses on the sale of mining equipment or properties, net operating losses and other capital losses are not deductible.

(h) If the allocation provisions of this section do not fairly represent the amount of the person's expenses paid or accrued in connection with the mining operation in the state, the person may petition the commissioner for the use of another method to effectuate an equitable allocation of the person's expenses.

15 AAC 65.130. Tax rate

The following rates are applicable to the taxable income of a person subject to the mining license tax: TAXABLE INCOME TAX RATE \$40,000 and under no tax Over \$40,000 and not over \$50,000 3 percent of the entire taxable income Over \$50,000 and not over \$100,000 \$1,500 plus 5 percent of the excess over \$50,000 Over \$100,000 \$4,000 plus 7 percent of the excess over \$100,000.

Article 3 Exemption from Tax

15 AAC 65.200. Temporary exemption for new mining operation

(a) As provided in [AS 43.65.010\(a\)](#), a new mining operation is exempt from the tax under [AS 43.65](#) for three and one-half years after production begins. The department will, in its discretion, suspend passage of the exemption period if mine production ceases for other than seasonal or ordinary shutdowns. Under [AS 43.65.010\(a\)](#), the tax exemption granted to new mining operations does not apply to the mining of sand and gravel.

(b) As provided in [AS 43.65.010\(b\)](#) and [15 AAC 65.210](#), the Department of Natural Resources will notify the department of the date on which production begins for each new mining operation. If the department determines that an operation qualifies as a new mining operation, the department will issue a certificate of exemption in accordance with [15 AAC 65.220](#).

(c) The department will consider the following factors in determining whether a person's operation is a new mining operation eligible for the three and one-half year exemption:

- (1)** whether the person or a prior owner or operator of the property was liable to pay the mining license tax on net income from the property after January 1, 1948;
- (2)** the location of the operation in relation to other properties being operated by the person;
- (3)** the geological structure of the ore body in relation to other ore bodies the person mines;
- (4)** the mining techniques and technology used; and
- (5)** the extent to which the person is required to invest new capital, employ different personnel and use additional facilities to exploit the resource.

(d) A temporary exemption will be granted to a person making extensive capital additions or improvements, and to a person applying new mining methods and techniques to a property previously owned and operated by another

person, but only if the previous mining operation has been closed, shut down, or abandoned for more than one mining season. An exemption will not be granted

- (1)** to a person who merely extends or expands an operation onto previously unmined properties, or
- (2)** when changes in ownership of an existing operation take place.

(e) The following examples illustrate eligibility for the three and one-half year tax exemption:

- (1)** Mining Company A has been a gold dredging operator for more than three and one-half years on three properties which it owns or leases. The properties are joined contiguously and lie within a single river valley. To extend its current operation, Company A acquires an additional lease which shares a common boundary with the other properties. Expanding the operation by developing and mining the additional leased property does not create a new mining operation eligible for the exemption.
- (2)** Company B has been conducting mining operations on 15 coal leases for 20 years. In 1985, the company sells the entire operation to Company C. Company C continues to operate on the properties and expands the operation by adding new equipment, including dredges, crushers, and bulldozers. Company C is not entitled to an exemption. A change in ownership of existing mining properties does not create a new mining operation.
- (3)** Company D owns and operates a hard rock gold mining operation on the southern side of Hurricane Ridge. This mine has been in production for 10 years. Company D acquired a lease for undeveloped gold mining properties on the northern side of Hurricane Ridge, completed development of the property, and began production on June 1, 1985. In anticipation of this new development, Company D made extensive capital expenditures, leased additional mining equipment and hired additional mining personnel. A geologist's study indicated that the gold bearing ore bodies on the north side of the hill are not part of a geological structure having any correlation with or similarity to the ore bodies on the south side. The distance between the two properties is 40 miles and is linked by a company-owned haul road. Although there is a road link and close proximity between the northern and southern properties, Company D is eligible for the exemption on the northern mining property because it made extensive capital expenditures for an operation on previously unmined property and hired additional personnel to operate the mine. The operation is not merely an extension of another ongoing operation.

15 AAC 65.210. Affidavit of initial production

- (a)** In order to be granted a certificate of exemption by the department, the owner or operator of a new mining operation shall record, in the recording district in which the operation is located, a sworn affidavit of initial production showing the location of the new mining operation, the commodities produced, the names of the operators, and the new mining operation's date of initial production. The affidavit must be recorded on a form provided by the Department of Natural Resources, or on a substantially similar form, and must be recorded within 90 days after the date of initial production. Failure to record the affidavit timely may result in forfeiture of any right to the three and one-half year exemption from the mining license tax.
- (b)** For the purpose of determining the date of initial production, the Department of Natural Resources may

examine the mining property and books, papers, records, and other documents relevant or material to initial production.

(c) Upon determination that production has begun on a new mining property, the Department of Natural Resources shall notify the department of:

- (1) the date of initial production;
- (2) the name of the person operating the mining property;
- (3) the type of metal, mineral, or other resource being extracted from the mining property; and
- (4) a legal description, lease number or other identifying name or characteristic of the property.

(d) For purposes of this section, the date of initial production is generally considered the date initial shipment of mined materials is transported from the mine for sale or additional non-mining processing. Also, production is considered to begin on the date that the mined product is first exported outside this state. However, the transport and sale of a bulk sample does not in and of itself constitute the beginning of production.

15 AAC 65.220. Certificate of exemption

(a) Upon receipt of notification of initial production from the Department of Natural Resources, the department will issue a certificate of exemption to a new mining operation, unless it determines, as provided by [15 AAC 65.200](#), that the operation does not qualify for the exemption.

(b) A certificate of exemption will be issued for a single mining operation. A certificate issued for a single mining operation will not exempt a person from tax on income received from other mining operations.

(c) A certificate of exemption issued for a mining operation temporarily exempts from the mining tax all persons receiving income from the property. For example, both the operator of a mining property and a royalty recipient are exempt from mining tax for the three and one-half year period.

(d) If the department determines that it will not issue a certificate of exemption, it will inform the applicant of its decision and the reason for making that decision. An applicant who disagrees with the decision may appeal that decision in accordance with [AS 43.05.240](#) and [15 AAC 05.001 - 15 AAC 05.050](#).

15 AAC 65.230. Composition of a mining operation

(a) A mining operation consists of all operating and non-operating mineral deposit interests and may be comprised of one or more mining properties.

(b) In determining whether mining properties are part of the same mining operation, the department will consider whether the operation, in conducting mining activities on several mining properties, uses common personnel, supply and maintenance facilities, mining-related treatment processes, storage facilities, roads, pipelines and transportation equipment, and mining techniques and technology. The department will also consider the extent to which the mineral deposit interests comprise a common mining property.

15 AAC 65.240. Transition rules

(a) The calendar or fiscal year tax period during which the exemption period described in [15 AAC 65.200](#) expires is the transition year.

(b) Mining net income subject to tax in a transition year is to be computed by an allocation formula. To determine taxable income, the entire taxable income in the transition year is multiplied by a fraction, the numerator of which is the number of days in the transition year falling outside the exemption period, and the denominator of which is the total number of days in the transition year.

(c) A mining operation that commenced production within three and one-half years before April 1, 1986 has 120 days after August 9, 1986 to record the affidavit required by [15 AAC 65.210](#). If a certificate of exemption is granted, the exemption period begins on the date of initial production.

Article 4 **General Provisions**

15 AAC 65.990. Definitions

In this chapter, unless the context requires otherwise,

- (1) "**bulk sample**" means the quantity of resource mined, gathered, taken, or otherwise accumulated as a specimen for the purpose of testing and analyzing the ore body before its development;
- (2) "**consolidated business**" means a corporation or group of corporations having more than 50 percent common ownership, direct or indirect;
- (3) "**department**" means the Department of Revenue;
- (4) "**development expense**" includes expenses paid or incurred after the determination that a deposit of mineral or ore is shown to exist in sufficient quantity and quality to reasonably justify commercial exploitation;
- (5) "**exploration expense**" includes those expenses incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral paid or incurred before the beginning of development of the mine or other deposit;
- (6) "**gravel**" means a mixture of small stones and pebbles or pebbles and sand that will pass through a three-inch, and be retained on a No. 4 United States standard, sieve;
- (7) "**mining operation**" means a business enterprise associated, directly or indirectly, with developing, removing, extracting, moving, or taking from the earth, water, or under water, metals, ores, minerals, asbestos, gypsum, coal, marketable earth, sand, gravel, and any other mineral deposit, including the treatment processes described in sec. 63(c)(4) of the Internal Revenue Code (26 U.S.C. 613), and such treatment processes normally applied by mine owners or operators to obtain a commercially marketable product, but not including the extraction or production of oil and natural gas, or the harvesting of trees or other natural living, organic resources;
- (8) "**mining property**" means each separate interest owned by the taxpayer in each mineral deposit in each separate tract or parcel of land;
- (9) "**person**" means an individual, trust, estate, partnership, corporation, joint venture, or group or combination of these acting as a unit;
- (10) "**place**" means each geographically separate mining operation not aggregated with another;
- (11) "**prosecute**" means to begin to carry on, to undertake, or to institute an action;
- (12) "**sand**" means separate gains or particles of disintegrated rock, easily distinguished by the unaided eye, which is finer than gravel and coarser than dust but not large enough to constitute pebbles.

Section VIII – Miscellaneous Land Use Administrative Regulations

Title 11: Natural Resources Chapter 96: Miscellaneous Land Use

Article 1

Provisions for General Land Use Activity

11 AAC 96.005. Purpose

The purpose of this chapter is to manage uses and activities on state public domain land, including shoreland, tideland, and submerged land, in order to minimize adverse effects on the land and its resources.

11 AAC 96.007. Applicability

This chapter applies to all land use activities on state land, except

- (1) activities authorized under any department-administered lease, oil and gas exploration license, contract, or permit that conveys an interest in land, including a coal prospecting permit, offshore prospecting permit, geothermal prospecting permit, homesite entry permit, and homestead entry permit; and
- (2) land that has, by administrative action or by act of the legislature, been reserved from multiple-use management or been withdrawn from the public domain, including a state park or land owned by the University of Alaska.

11 AAC 96.010. Uses requiring a permit

(a) On state land, a permit or other written authorization is required for

- (1) an activity involving
 - (A) the use of explosives and explosive devices, except firearms;
 - (B) uses that are not listed in [11 AAC 96.020](#) as generally allowed uses;
 - (C) the use of hydraulic prospecting or mining equipment methods;
 - (D) drilling to a depth in excess of 300 feet, including exploratory drilling or stratigraphic test wells on state land not under oil or gas lease;
 - (E) geophysical exploration for minerals subject to lease or an oil and gas exploration license under [AS 38.05.131](#) - 38.05.181;
 - (F) a commercial recreation camp or facility, whether occupied or unoccupied, that remains overnight; or
 - (G) an event or assembly of more than 50 persons; or
 - (2) repealed 12/7/2002;
 - (3) an activity on land subject to a mineral or land estate property interest by a person other than the holder of a property interest, or the holder's authorized representative, if the parties cannot agree on what constitutes reasonable concurrent use.
- (b) Repealed 12/7/2002.

11 AAC 96.014. Special use land

Omitted: Pertains to Public Recreation

11 AAC 96.016. Designated public use areas

Omitted: Pertains to Public Recreation

11 AAC 96.018. Uses requiring registration

(a) Entry will be permitted under [11 AAC 96.020](#) as a generally allowed use for commercial recreation purposes on a day-use basis with no camp or facility, whether occupied or unoccupied, that remains overnight, and including landing commercial recreation clients on state land by aircraft or watercraft other than at an airport or harbor managed by a municipality or by the Department of Transportation and Public Facilities, if the operator complies with the following requirements:

- (1) registering with the department before the use each calendar year;
 - (2) providing information required by the department, including the name of the business, type of activity, geographic area, number of clients served, number of visitor days, number of days in operation, and means of access to and from the area; and
 - (3) paying a registration fee as required by [11 AAC 05.010\(a\)](#).
- (b) Registering a use of state land
- (1) is not a disposal of an interest in land; and
 - (2) does not grant a preference right to a lease or other disposal.

11 AAC 96.020. Generally allowed uses

(a) A permit or other written authorization is required for uses and activities not appearing on the list in this subsection. Unless otherwise provided in

(b) of this section, in a special use land requirement in [11 AAC 96.014](#), or in a public use area land requirement under [11 AAC 96.016](#), the following land uses and activities, alone or in combination, are generally allowed uses on state-owned public domain land without any permit or other written authorization from the department, except that a land use or activity for a commercial recreation purpose requires prior registration under [11 AAC 96.018](#):

- (1) travel or travel-related activities, as follows:
 - (A) hiking, backpacking, skiing, climbing, or other foot travel;
 - (B) bicycling;
 - (C) travel by horse or dogsled or with pack animals;
 - (D) using a highway vehicle with a curb weight of up to 10,000 pounds, including a pickup truck and four-wheel-drive vehicle, on or off an established road easement, if the use off the road easement does not cause or contribute to water quality degradation, alteration of drainage systems, significant rutting, ground disturbance, or thermal erosion;
 - (E) using a recreational-type off-road or all-terrain vehicle with a curb weight of up to 1,500 pounds, including a snowmobile and four-wheeler, on or off an established road easement if use off the road easement does not cause or contribute to water quality degradation, alteration of drainage systems, significant rutting, ground disturbance, or thermal erosion;
 - (F) landing an aircraft or using watercraft without damaging the land, including shoreland, tideland, and submerged land;
 - (G) driving livestock, including any number of reindeer or up to 100 horses, cattle, or other domesticated animals;
- (2) access improvements, as follows:
 - (A) brushing or cutting a trail less than five feet wide using only hand-held tools such as a chainsaw; making

a trail does not create a property right or interest in the trail;

(B) anchoring a mooring buoy in a lake, river, or marine waters, or placing a float, dock, boat haulout, floating breakwater, or boathouse in a lake, river, or marine waters, for the personal, noncommercial use of the upland owner, if the use does not interfere with public access or another public use, and if the improvement is placed within the projected sidelines of the contiguous upland owners parcel or otherwise has the consent of the affected upland owner; in this subparagraph,

(i) "float" or "dock" means an open structure without walls or roof that is designed and used for access to and from the water rather than for storage, residential use, or other purposes;

(ii) "boat haulout" means either a rail system, at ground level or elevated with pilings, or a line attached from the uplands to an anchor or mooring buoy;

(iii) "floating breakwater" means a structure, including a log bundle, designed to dissipate wave or swell action;

(iv) "boathouse" means a structure designed and used to protect a boat from the weather rather than for other storage, residential use, or other purposes;

(3) removing or using state resources, as follows:

(A) hunting, fishing, or trapping, or placement of a crab pot, shrimp pot, herring pound, or fish wheel; nothing in this subparagraph relieves a person from complying with applicable state and federal statutes and regulations on the taking of fish and game;

(B) harvesting wild plants, mushrooms, berries, and other plant material for personal, noncommercial use; however, the cutting of trees is not a generally allowed use under this subparagraph;

(C) using dead and down wood for a cooking or warming fire, unless the department has closed the area to fires during the fire season;

(D) grazing no more than five domesticated animals;

(E) recreational gold panning;

(F) hard-rock mineral prospecting or mining using light portable field equipment, including a hand-operated pick, shovel, pan, earth auger, or a backpack power drill or auger;

(G) suction dredging using a suction dredge with a nozzle intake of six inches or less, powered by an engine of 18 horsepower or less, and pumping no more than 30,000 gallons of water per day;

(4) other improvements and structures on state land, as follows:

(A) setting up and using a camp for personal, noncommercial recreational purposes, or for any non-recreational purpose, including as a support camp during mineral exploration, for no more than 14 days at one site, using a tent platform or other temporary structure that can readily be dismantled and removed, or a floathouse that can readily be moved; the entire camp must be moved at least two miles before the end of the 14-day period; a cabin or other permanent improvement is not allowed, even if on skids or another nonpermanent foundation; the camp must be removed immediately if the department determines that it interferes with public access or other public uses or interests;

(B) brushing or cutting a survey line less than five feet wide using only hand-held tools, including a chainsaw, or setting a survey marker; however, a survey monument may not be set without written survey instructions issued under [11 AAC 53](#);

(C) placing a residential sewer outfall into marine waters from a contiguous privately owned upland parcel, with the consent of the affected parcel owners, if the outfall is within the projected sidelines of the contiguous upland parcel and is buried to the extent possible or, where it crosses bedrock, secured and covered with rocks to prevent damage; nothing in this subparagraph relieves a person from complying with state and federal statutes and regulations applicable to residential sewer outfalls;

(D) placing riprap or other suitable bank stabilization material to prevent erosion of a contiguous privately owned upland parcel if

(i) no more than one cubic yard of material per running foot is placed onto state shoreland; and

(ii) the project is otherwise within the scope of the United States Army Corps of Engineers Nationwide Permit 13 (Bank Stabilization), as set out in 67 Fed. Reg. 2,020 - 2,095, dated January 15, 2002 and adopted by reference;

(5) uses not listed in (1) - (4) of this subsection that

(A) are not conducted for a commercial recreational purpose;

(B) are not listed in [11 AAC 96.010](#);

(C) do not cause or contribute to significant disturbance of vegetation, drainage, or soil stability;

(D) do not interfere with public access or other public uses or interests; and

(E) do not continue for more than 14 consecutive days at any site; moving the use to another site at least two miles away starts a new 14-day period. (b) The list of generally allowed uses in (a) of this section does not

(1) apply to land withdrawn from the public domain and no longer managed under [AS 38](#), including a state park and land owned by the University of Alaska;

(2) exempt a user from complying with other applicable federal, state, or municipal statutes, ordinances, and regulations; or

(3) authorize a use if another person has already acquired an exclusive property right to undertake that use.

(c) In order to operate under a generally allowed use listed in this section, the user must comply with the conditions set out in [11 AAC 96.025](#).

(d) If the department determines that, under the circumstances of a particular case, an otherwise generally allowed use interferes with public access or other public uses or interests, the use must cease.

11 AAC 96.025. Conditions for generally allowed uses

A generally allowed use listed in [11 AAC 96.020](#) is subject to the following conditions:

(1) activities employing wheeled or tracked vehicles must be conducted in a manner that minimizes surface damage;

(2) vehicles must use existing roads and trails whenever possible;

(3) activities must be conducted in a manner that minimizes

(A) disturbance of vegetation, soil stability, or drainage systems;

(B) changing the character of, polluting, or introducing silt and sediment into streams, lakes, ponds, water holes, seeps, and marshes; and

(C) disturbance of fish and wildlife resources;

(4) cuts, fills, and other activities causing a disturbance listed in (3)(A) - (C) of this section must be repaired immediately, and corrective action must be undertaken as may be required by the department;

(5) trails and campsites must be kept clean; garbage and foreign debris must be removed; combustibles may be burned on site unless the department has closed the area to fires during the fire season;

(6) survey monuments, witness corners, reference monuments, mining location posts, homestead entry corner posts, and bearing trees must be protected against destruction, obliteration, and damage; any damaged or obliterated markers must be reestablished as required by the department under [AS 34.65.020](#) and [AS 34.65.040](#);

(7) every reasonable effort must be made to prevent, control, and suppress any fire in the operating area; uncontrolled fires must be immediately reported;

(8) holes, pits, and excavations must be repaired as soon as possible; holes, pits, and excavations necessary to verify discovery on prospecting sites, mining claims, or mining leasehold locations may be left open but must be maintained in a manner that protects public safety;

(9) on lands subject to a mineral or land estate property interest, entry by a person other than the holder of a property interest, or the holder's authorized representative, must be made in a manner that prevents unnecessary or unreasonable interference with the rights of the holder of the property interest.

11 AAC 96.030. Application

(a) An application for a permit under [11 AAC 96.010](#) must be accompanied by the nonrefundable application fee required by [11 AAC 05.010\(a\)](#). The application must contain the following information in sufficient detail to allow evaluation of the planned activities' effect on the land:

(1) except if the application is for a limited non-timber forest product commercial harvest permit, a map at a sufficient scale showing the general location of all activities and routes of travel of all equipment for which a permit is required;

(2) a description of the proposed activity, any associated structures, and the type of equipment that will be used.

(b) Repealed 8/6/94.

(c) The department will give notice to an upland owner of an application involving shoreland, tideland, or submerged land adjacent to the upland owner's property. The department may give public notice of any application. As part of public notice, the department may include publication in a newspaper of local or statewide circulation or on the Alaska Online Public Notice System developed under [AS 44.62.175](#). The applicant must pay any advertising costs for a published public notice.

11 AAC 96.035. Commercial harvest of non-timber forest products. Omitted: Pertains to Forestry Harvest

11 AAC 96.040. Term and conditions

(a) Issuance of a permit under this chapter is not a disposal of an interest in land, and does not grant a preference right to a lease or other disposal. The permit is revocable for cause for violation of a permit provision or of this chapter, and is revocable at will if the department determines that the revocation is in the state's interest. The permit remains in effect for the term issued, unless revoked sooner. The department will give 30 days' notice before revoking a permit at will. A revocation for cause is effective immediately.

(b) Each permit issued is subject to any provisions the department determines necessary to assure compliance with this chapter, to minimize conflicts with other uses, to minimize environmental impacts, or otherwise to be in the interests of the state.

(c) Except as provided in [11 AAC 96.035\(c\)](#), a permit will be granted for a specified term of up to five years, unless revoked sooner. Except as provided in [11 AAC 96.035\(c\)](#), the permit may be extended for any number of consecutive periods, each period not to exceed one year. Proposed modifications to the issued permit must be submitted in writing and must be approved by the department before the permittee undertakes the modification. The department may modify existing provisions or require additional provisions in the approval of an extension or modification or during the term of the permit, if the department determines that the modification or additional provision is necessary to assure compliance with this chapter, to minimize conflicts with other uses, to minimize environmental impacts, or otherwise to be in the interests of the state.

(d) The department will not issue a permit that denies an upland owner reasonable access to navigable waters during or after the permit activities. If the application is for an excavation or fill that will alter the mean high water line or ordinary high water mark, the permit will not be issued until that line has been determined and accepted by the department.

(e) If the permit involves obtaining fill or other material from state land and placing it on the permit site, or removing material from the permit site for beneficial uses as determined by the department, the fill or other material must be purchased under [11 AAC 71](#) before being moved.

(f) A permit under this chapter does not authorize the placement of permanent improvements. Temporary improvements authorized by a permit under this chapter must be removed when the permit expires or is revoked, unless otherwise specified by the department. If the permittee fails to remove the improvements in compliance with this requirement, the department may sell, destroy, or remove the improvements, whichever is most convenient for the department, at the permittee's expense, including the department's costs associated with restoration and expenses incurred in the performance of these duties.

(g) The permit will not be effective until executed by the department and the permittee has paid any applicable use fee required by [11 AAC 05.010\(e\)](#) and provided a certificate of insurance and security, if required under [11 AAC 96.060](#) and [11 AAC 96.065](#). (h) The permittee must agree to indemnify and hold harmless, consistent with state law, the state and its officers, agents, and employees for any third party claims arising from the exercise of the privileges granted by the permit.

11 AAC 96.050. Effective date Repealed.

11 AAC 96.060. Performance guaranty

(a) Unless the department waives the requirement after considering the applicant's history of compliance and the potential risk to the state, the applicant shall furnish security acceptable to the department. The department may accept as security

- (1) a personal bond accompanied by
 - (A) an irrevocable letter of credit issued by a bank or other financial institution authorized to do business in the United States;
 - (B) a certificate of deposit in the amount of the bond issued in sole favor of the department by a bank or other financial institution authorized to do business in this state; or
 - (C) a cash deposit maintained in a depository account as directed by the commissioner;
- (2) a corporate surety bond from a surety company authorized to do business in this state; or
- (3) other security acceptable to the department.

(b) Security furnished in accordance with (a) of this section must be conditioned upon compliance with all terms of the permit. The department will determine the amount of the security, if required, based on the scope and nature of the activity planned and the potential cost of restoring the permit site. A permit that requires security will not be issued until acceptable security has been furnished.

11 AAC 96.065. Insurance

Unless the department waives the requirement after considering the risks associated with the activity planned, the permittee shall secure, and maintain in force during the term of the permit, insurance in the amount and of a type that the department determines necessary to protect the permittee and the state. A certificate of insurance must be furnished to the department before issuance of the permit and must provide for a 30-day notice in the event of cancellation, nonrenewal, or material change of condition. All insurance policies must comply with [AS 21](#) and be issued by insurers licensed to transact the business of insurance under [AS 21](#). The state shall be listed as an additional named insured on the policy.

11 AAC 96.070. Annual report; completion statement

(a) For a permit with a term of more than one year, the department may require

- (1) the permittee to file information the department determines necessary to show compliance with the permit at the end of each year's authorized operating period; and
- (2) operational information from the permittee, including the number of clients served, number of visitor days, and number of days in operation.

(b) In a permit, the department may require the permittee, upon completion of the operations under the permit, to file a completion statement, including a detailed description of cleanup and restoration work at the site. The department may also require the permittee to provide a map showing the location of all permit activities. The permittee shall complete any additional cleanup and restoration work that may be required.

11 AAC 96.080. Confidential status of information

Repealed.

11 AAC 96.090. Inspection of operation

All operations under [11 AAC 96.010](#) - [11 AAC 96.150](#) are subject to inspection by the director. The permittee is not obligated to provide transportation or lodging for inspection personnel.

11 AAC 96.100. Penalty Repealed.

11 AAC 96.110. Appeals

An eligible person affected by a decision issued under this chapter may appeal that decision in accordance with [11 AAC 02](#).

11 AAC 96.120. Purpose Repealed.

11 AAC 96.130. Applicability Repealed.

11 AAC 96.140. General stipulations Repealed.

11 AAC 96.145. Violation

(a) A person who violates this chapter or a provision of a permit issued under this chapter is subject to any action available to the department for enforcement and remedies, including revocation of the permit, civil action for forcible entry and detainer, ejection, trespass, damages, and associated costs, or arrest and prosecution for criminal trespass in the second degree. The department may seek damages available under a civil action, including restoration damages, compensatory damages, and treble damages under [AS 09.45.730](#) or [09.45.735](#) for violations involving injuring or removing trees or shrubs, gathering geotechnical data, or taking mineral resources.

(b) If a person responsible for an unremedied violation of this chapter or a provision of a permit issued under this chapter applies for a new authorization from the department under [AS 38.05.035](#) or [38.05.850](#), the department may require the applicant to remedy the violation as a condition of the new authorization, or to begin remediation and provide security under [11 AAC 96.060](#) to complete the remediation before receiving the new authorization. If a person who applies for a new authorization under [AS 38.05.035](#) or [38.05.850](#) has previously been responsible for a violation of this chapter or a provision of a permit issued under this chapter, whether remedied or unremedied, that resulted in substantial damage to the environment or to the public, the department will consider that violation in determining the amount of the security to be furnished under [11 AAC 96.060](#) and may require the applicant to furnish three times the security that would otherwise be required.

11 AAC 96.150. Definitions Repealed 3/21/81.

Article 2

Additional Provisions for Seismic Exploration and Stratigraphic Tests

11 AAC 96.210. Submission of seismic data and stratigraphic test data. *Omitted: Pertains to Oil & Gas*

11 AAC 96.220. Confidential status of information. *Omitted: Pertains to Oil & Gas*

11 AAC 96.230. Reimbursement for seismic exploration data. *Omitted: Pertains to Oil & Gas*

11 AAC 96.240. Liability. *Omitted: Pertains to Oil & Gas*

Article 3

General Provisions

11 AAC 96.250. Definitions

In this chapter

(1) "**land use activity**" means any use of or entry on state land for any purpose, including but not limited to exploration, hunting, recreation, and access;

(2) "**director**" means the director of the division of lands in the Department of Natural Resources, or an authorized representative of the director;

(3) "**department**" means the Department of Natural Resources;

(4) "**processing**" means the preparation of data, by computer or other device, which enhances the data;

(5) "**seismic exploration**" means the survey of the earth's surface or the use of seismic methods to gather data that may be used to determine subsurface geologic characteristics;

(6) "**seismic exploration data**" means data, including information necessary to locate and identify that data, derived from seismic exploration of state land and initially processed to a level comparable to that of the data distributed to participants in a group seismic survey by use of techniques used to render the data in a format ready for geological interpretation for the first time; such techniques include but are not limited to amplitude recovery, deconvolution, static corrections, velocity analysis, normal moveout corrections, common depth point stacking, digital filtering and migration. "Seismic exploration data" may include navigation tapes, velocity spectra, final stack sections, true amplitude sections and migrated sections; but does not include, and the applicant is not required to submit to the director

(A) magnetic tapes other than navigation tapes; and

(B) data that would otherwise be included, but which the permittee or a contractor working on behalf of the permittee does not obtain or prepare;

(7) "**stratigraphic test**" means the drilling of a well to a sufficient depth to measure the geologic, geophysical, and engineering parameters used for determining an area's oil and gas potential;

(8) "**stratigraphic test data**" means all logs, surveys, samples, and tests taken in association with the drilling and testing of a stratigraphic test well and includes but is not limited to, mud logs, electrical logs, density logs, sonic logs, neutron logs, gamma logs, dip-meter surveys, velocity surveys, directional surveys, core descriptions, sample descriptions (including descriptive palynology and paleontology), fluid analyses, drillstem tests, formation tests, and periodic drilling and operations reports;

(9) "**ADL number**" means the file number assigned as an identifier by the division exercising the authority and duties of the division of lands identified under [AS 38.05](#) within the department;

(10) "**commercial recreation**" means recreational use of land, water, and resources for business or financial gain; commercial recreation includes guided sport fishing, guided and outfitted sport hunting, guided recreation, and air and water taxi services that provide transportation to recreational users of state land; "commercial recreation" does not include solely anchoring a vessel overnight on state shoreland, tideland, or submerged land;

(11) "**curb weight**" means the weight of a vehicle with a full tank of fuel and all fluids topped off but with no one sitting inside or on the vehicle and no cargo loaded;

(12) "**public domain land**" means state land that has not been reserved or withdrawn from multiple use management under [AS 38](#) by act of the state legislature or, in compliance with the acreage limit set by [AS 38.05.300](#), by administrative action;

(13) "**shoreland**" has the meaning given in [AS 38.05.965](#);

(14) "**state land**" has the meaning given in [AS 38.05.965](#); "state land"

(A) includes an interest in land that is owned by the state and managed under [AS 38](#); and

(B) does not include Alaska mental health trust land as defined in [11 AAC 99.990](#) and managed under [AS 37.14.009](#) and [AS 38.05.801](#);

(15) "submerged land" has the meaning given in [AS 38.05.965](#);

(16) "**thermal erosion**" means the partial or complete melting of a continuous or discontinuous permafrost layer; for purposes of this paragraph, "permafrost layer" includes ice lenses, ice wedges, and pingos;

(17) "**tideland**" has the meaning given in [AS 38.05.965](#);

(18) "**visitor day**" means all or any part of a calendar day during which a commercial recreation client is present, with each client representing a separate visitor day if multiple clients are present at any time during a calendar day;

(19) "**motorized vehicle**" means a vehicle that is powered by an internal combustion engine and that an individual uses for the purpose of personal or commercial transportation;

(20) "**operator**" means a person that engages in commercial recreation;

(21) "**trip**" means travel of brief duration to a destination on state land, that may include stopovers on state land;

(22) "**commercial harvest**" means the harvest of non-timber forest products for the primary purpose of sale, resale, or use in a manufacturing process resulting in a product that will be sold or used for business activities;

(23) "**non-timber forest products**" means forest products derived from biological resources excluding firewood, saw-timber, pulpwood, cull logs, small round-wood, house logs, poles, posts, Christmas or other holiday trees, minerals, animals, animal parts, rocks, water, and soil; "non-timber forest products" includes mushrooms, conks, boughs, cones, leaves, burls, landscaping transplants, roots, flowers, and fruits;

(24) "**abandon**" means to leave unattended for a period of time longer than 72 hours;

(25) "**developed facility**" includes a building, boat ramp, campground, picnic area, rest area, visitor information center, swim beach, parking area, and developed ski or shooting area;

(26) "**explosive**" means a chemical compound, mixture, or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat; "**explosive**" includes dynamite, blasting power, nitroglycerin, blasting caps, nitrojelly, and mixtures containing nitrates and petroleum based fuel; explosive does not include salable fireworks as defined by [AS 18.72.100](#);

(27) "**firearm**" includes pistols, rifles, shotguns, revolvers, and mechanical, gas-operated, or air-operated guns;

(28) "**firework**" means an explosive device or combustible material used to produce lights, smoke, or noise for entertainment;

(29) "**non-functional**" means not able to perform its normal operational function;

(30) "structure" means something constructed or maintained on the ground or that is attached to something located on the ground; "structure" includes buildings, radio and television towers, sheds, swimming pools, tennis courts, gazebos, decks, and boathouses.

Administrative Regulations

Title 11: Natural Resources

Chapter 86: MINING RIGHTS

Article 8

11 AAC 86.145. Surface use

(a) The following provisions apply to land for which the state owns the surface:

(1) A locator does not have exclusive use of the surface of the location. A locator may use the surface of the location only to the extent necessary for the prospecting for, extraction of, or basic processing of mineral deposits. A locator may not restrict public access to or other uses of the surface unless approved in writing by the director. The director may allow the locator to restrict public access or other surface uses of the location only to protect public safety or prevent unreasonable interference with the rights of the locator.

(2) The building, placing, or use of surface structures or other surface improvements, including airstrips and roads, within the boundaries of a mining property must be approved by the director in writing through a plan of operations, land use permit, or other written authorization. The director will only approve surface structures or other surface improvements that are necessary to carry out authorized operations. Factors to be used by the director in approving the surface structures, other surface improvements, or uses include: access to the property, remoteness of location, security of the operations, planned level of operations, existing authorized surface uses, and the current level of activity.

(3) A classification or designation indicating that timber and other forest products of significant value are included within a mining property is prima facie evidence that the land on which the property is located is considered to be "timberlands" for purposes of [AS 38.05.255](#). The division of forestry must be contacted before using or clearing timber from timberlands.

(4) The director may require documentary evidence of mining activity to support a request for surface use. Failure to provide documentary evidence when required by the director is grounds for denial of the requested surface use. At the request of a person making a request for surface use, the department will keep confidential the cost data and financial information submitted by the person, but the person must clearly identify the cost data and financial information and separate it from information not qualifying under [AS 38.05.035\(a\)\(9\)](#) for confidential treatment.

(b) If the surface estate or interests in the surface estate are owned by a third party with the minerals reserved to the state under [AS 38.05.125](#), the locator must make provisions under [AS 38.05.130](#) to pay the owner of the surface estate or surface interests for any damage that may be caused by the use or development of that location. If the locator and the owner of the surface estate or interests are unable to reach agreement concerning the provision for payment of damages, the locator may enter the land in the exercise of

the locator's right to use or develop the minerals reserved under [AS 38.05.125](#) after a determination by the director that the proposed activities are necessary for the locator to exercise the rights reserved under [AS 38.05.125](#), and after posting a surety bond determined by the director under [AS 38.05.130](#). A locator who wishes to enter the land in this manner shall provide information requested by the director so that the director may make each of the determinations required by this subsection. The locator shall also comply with requirements for a reclamation plan and bond under [AS 27.19.010](#) - 27.19.100 and [11 AAC 97.010](#) - [11 AAC 97.640](#).

Section IX: Recreational Mining Areas

Title 41: Public Resources

Chapter 41.23 MULTIPLE USE MANAGEMENT OF PUBLIC RESOURCES

Article 03. Recreational Mining Areas

Sec. 41.23.600. Purpose.

The purpose of [AS 41.23.600](#) - 41.23.620 is to establish the area described in [AS 41.23.620](#) as the Caribou Creek Recreational Mining Area. The Caribou Creek Recreational Mining Area is established to provide for a public recreational mining area to permit public recreational activities and to allow other multiple use activities to continue as long as the activities do not detract from the primary purpose for the establishment of the Caribou Creek Recreational Mining Area.

Sec. 41.23.610. Management and regulations.

(a) The commissioner is responsible for the management of the surface and subsurface estate within the Caribou Creek Recreational Mining Area necessary to carry out the purposes of [AS 41.23.600](#). The commissioner shall adopt and may revise a management plan and shall adopt regulations for the management, use, and development of the Caribou Creek Recreational Mining Area.

(b) The management plan, including any revisions, and regulations adopted by the commissioner shall be developed in consultation with the commissioner of fish and game and the commissioner of transportation and public facilities. The management plan and regulations shall address, but not be limited to,

- (1) the methods of mining permitted within the Caribou Creek Recreational Mining Area;
- (2) the types of mining equipment that may be used within the Caribou Creek Recreational Mining Area;
- (3) the protection of habitat within the Caribou Creek Recreational Mining Area; and
- (4) other restrictions consistent with the purposes stated in [AS 41.23.600](#).

(c) Except as provided in this subsection, the Caribou Creek Recreational Mining Area is open to recreational mining under [AS 41.23.600](#) - 41.23.620. The commissioner of fish and game is responsible for the management of the fish and game resources and the public use of fish and wildlife resources within the Caribou Creek Recreational Mining Area consistent with the purposes stated in [AS 41.23.600](#). The commissioner of fish and game shall issue a general permit to the public authorizing recreational mining activities subject to seasonal restrictions on the mining activities within specified waterbody areas necessary to maintain fishery resources within the Caribou Creek Recreational Mining Area.

(d) The Caribou Creek Recreational Mining Area is closed to mineral entry under [AS 38.05.185](#) - 38.05.275.

(e) The commissioner shall permit the construction and realignment of the Glenn Highway by the commissioner of transportation and public facilities within the Caribou Creek Recreational Mining Area as follows:

(1) Township 20 North, Range 10 East, Seward Meridian

Section 29: The centerline of the realigned Glenn Highway is described as commencing at the Southwest corner of Section 29; thence on a state plane, Zone 4 bearing of North 2 degrees 09'55" West, along the West boundary of Section 29, 1481.55 feet to proposed centerline Station 692+58.19 and the True Point of Beginning; thence South 85 degrees 52'40" East, a distance of 3395.32 feet to proposed centerline Station 726+53.51; thence along a curve to the left, having a radius of 916.73 feet, through an arc of 121 degrees 37'14", a distance of 1945.93 feet to P.C.C. Station 745+99.44; thence along a compound curve to the left, having a radius of 1637.02 feet, through an arc of 30 degrees 01'50", a distance of 858.01 feet to Point of Tangent Station 754+57.45; thence North 57 degrees 31'44" West, a distance of 453.00 feet to P.C. Station 759+10.45; thence along a curve to the right, having a radius of 996.45 feet, through an arc of 144 degrees 30'28", a distance of 2513.18 feet to Point of Tangent Station 784+23.63 BACK = 741+49.55 AHEAD; thence North 86 degrees 58'44" East, a distance of 1347.13 feet to Station 754+96.68, a point on the east boundary of Section 29, said point is South 2 degrees 09'55" East, a distance of 115.88 feet from the Northeast corner of Section 29;

(2) the right-of-way lines that cross Caribou Creek Recreational Mining Area extend varying distances from the centerline as follows:

(A) from Station 760+00 to Station 765+00 the right-of-way extends 300 feet on the left of centerline and 150 feet on the right;

(B) from Station 765+00 to Station 780+00, the right-of-way extends 300 feet on each side of the centerline;

(C) from Station 780+00 to P.T. Station 784+23.63 the right-of-way extends 300 feet on the left and 400 feet to the right of the centerline.

Sec. 41.23.620. Caribou Creek Recreational Mining Area.

The vacant and unappropriated state-owned land and water and the state land and water acquired in the future that lie within 100 feet of either ordinary high water or mean high tide of the banks of the creeks or rivers described in this section are designated as the Caribou Creek Recreational Mining Area, are reserved from all uses incompatible with the purposes of [AS 41.23.600](#), and are assigned to the department for control and management:

Township 20 North, Range 10 East, Seward Meridian

- (1) That portion of Caribou Creek located in
Section 28: W1/2
Section 29: E1/2
- (2) That portion of the Matanuska River located in
Section 32: SE1/4
Section 33: NE1/4, NW1/4, SW1/4.

Sec. 41.23.630. Petersville Recreational Mining Area.

(a) The purpose of this section is to establish the area described in (f) of this section as the Petersville Recreational Mining Area. The Petersville Recreational Mining Area is established to provide for a public recreational mining area to permit public recreational activities and to allow other multiple-use activities to continue as long as the activities do not detract from the primary purpose for the establishment of the Petersville Recreational Mining Area.

(b) The commissioner is responsible for the management of the surface and subsurface estate within the Petersville Recreational Mining Area necessary to carry out the purposes of this section. The commissioner shall adopt and may revise a management plan and shall adopt regulations for the management, use, and development of the Petersville Recreational Mining Area. The management plan, including any revisions, and regulations adopted by the commissioner shall be developed in consultation with the commissioner of fish and game and the commissioner of transportation and public facilities. The management plan and regulations must address, but not be limited to,

- (1) the methods of mining permitted within the Petersville Recreational Mining Area;
- (2) the types of mining equipment that may be used within the Petersville Recreational Mining Area;
- (3) the protection of habitat within the Petersville Recreational Mining Area; and
- (4) other restrictions consistent with the purposes stated in this section.

(c) Except as provided in this subsection, the Petersville Recreational Mining Area is open to recreational mining under this section. The commissioner of fish and game is responsible for the management of the fish and game resources and the public use of fish and wildlife resources within the Petersville Recreational Mining Area consistent with the purposes stated in this section. The commissioner of fish and game shall issue a general permit to the public authorizing recreational mining activities subject to seasonal restrictions on the mining activities within specified waterbody areas necessary to maintain fishery resources within the Petersville Recreational Mining Area.

(d) The Petersville Recreational Mining Area is closed to mineral entry under [AS 38.05.185](#) - 38.05.275.

(e) The commissioner shall permit the construction and realignment of the Petersville Road within the Petersville Recreational Mining Area as is determined necessary by the commissioner of transportation and public facilities.

(f) The vacant and unappropriated state-owned land and water and the state land and water acquired in the future that lie within the following described mining claims described in United States Mineral Survey No. 2384 are reserved from all uses incompatible with the purposes of this section and are assigned to the department for control and management as the Petersville Recreational Mining Area:

- (1) Township 28 North, Range 8 West, Seward Meridian
Sections 6 - 8: Daisy No. 2; Hidden Treasure No. 1; Hidden Treasure No. 2; Flora No. 1; Flora No. 2; Moose No. 1; Beaver No. 1; Alexander No. 1; Alexander No. 2; Lost Shovel No. 1; Lost Shovel No. 2; Peters Creek No. 8; Peters Creek No. 9; Peters Creek No. 10; Peters Creek No. 11;
Sections 21 and 28: Alder No. 1; Alder No. 2; Cottonwood No. 3; Cottonwood No. 4; Seattle No. 1; Seattle No. 2; Contact No. 1; Contact Claim No. 2; Willow Claim; Korter Bench.
- (2) Township 28 North, Range 9 West, Seward Meridian
Section 1: Daisy No. 2; Hidden Treasure No. 1.

Section X – Appeals Administrative Regulations

Title 11: Natural Resources Chapter 2: APPEALS

Part 1: Office of the Commissioner

11 AAC 02.010. Applicability and eligibility

(a) This chapter sets out the administrative review procedure available to a person affected by a decision of the department. If a statute or a provision of this title prescribes a different procedure with respect to a particular decision, that procedure must be followed when it conflicts with this chapter.

(b) Unless a statute does not permit an appeal, an applicant is eligible to appeal or request reconsideration of the department's decision on the application. An applicant is eligible to participate in any appeal or request for reconsideration filed by any other eligible party.

(c) If a statute restricts eligibility to appeal or request reconsideration of a decision to those who have provided timely written comment or public hearing testimony on the decision, the department will give notice of that eligibility restriction as part of its public notice announcing the opportunity to comment.

(d) If the department gives public notice and allows a public comment period of at least 30 days on a proposed action, and if no statute requires opportunity for public comment, the department may restrict eligibility to appeal or request reconsideration to those who have provided timely written comment or public hearing testimony on the proposed action by including notice of the restriction as part of its public notice announcing the opportunity to comment.

(e) An eligible person affected by a decision of the department that the commissioner did not sign or cosign may appeal the decision to the commissioner within the period set by [11 AAC 02.040](#).

(f) An eligible person affected by a decision of the department that the commissioner signed or cosigned may request the commissioner's reconsideration within the period set by [11 AAC 02.040](#).

(g) A person may not both appeal and request reconsideration of a decision.

11 AAC 02.015. Combined decisions

(a) When the department issues a combined decision that is both a final disposal decision under [AS 38.05.035](#)(e) and any other decision, including a disposal decision combined with a land use plan decision, or a disposal decision to grant certain applications combined with a decision to deny others, the appeal process set out for a disposal decision in [AS 38.05.035](#)(i) - (m) and this chapter applies to the combined decision. (b) Repealed 12/27/2012.

11 AAC 02.020. Finality of a decision for purposes of appeal to court

(a) Unless otherwise provided in a statute or a provision of this title, an eligible person must first either appeal or request reconsideration of a decision in accordance with this chapter before appealing a decision to superior court.

(b) The commissioner's decision on appeal is the final administrative order and decision of the department for purposes of appeal to the superior court.

(c) The commissioner may order or deny a request for reconsideration within 30 calendar days after issuance of the decision, as determined under [11 AAC 02.040](#)(c) - (e). If the commissioner takes no action during the 30-day period, the request for reconsideration is considered denied. Denial of a request for reconsideration is the final administrative order and decision of the department for purposes of appeal to the superior court.

(d) If the commissioner timely orders reconsideration of the decision, the commissioner may affirm the decision, issue a new or modified decision, or remand the matter to the director for further proceedings. The commissioner's decision, other than a remand decision, is the final administrative order and decision of the department for purposes of appeal to the superior court.

11 AAC 02.030. Filing an appeal or request for reconsideration

(a) An appeal or request for reconsideration under this chapter must

(1) be in writing;

(2) be filed by personal service, mail, fax, or electronic mail;

(3) be signed by the appellant or the appellant's attorney, unless filed by electronic mail; an appeal or request for reconsideration filed by electronic mail must state the name of the person appealing or requesting reconsideration and a single point of contact to which any notice or decision concerning the appeal or request for reconsideration is to be sent;

(4) be correctly addressed;

(5) be timely filed in accordance with [11 AAC 02.040](#);

(6) specify the case reference number used by the department, if any;

(7) specify the decision being appealed or for which reconsideration is being requested;

(8) specify the basis upon which the decision is challenged;

(9) specify any material facts disputed by the appellant;

(10) specify the remedy requested by the appellant;

(11) state the address to which any notice or decision concerning the appeal or request for reconsideration is to be mailed; an appellant may also provide a telephone number where the appellant can be reached during the day or an electronic mail address; an appeal or request for reconsideration filed electronically must state a single address to which any notice or decision concerning the appeal or request for reconsideration is to be mailed;

(12) identify any other affected agreement, contract, lease, permit, or application by case reference number, if any; and

(13) include a request for an oral hearing, if desired; in the appeal or request for reconsideration, the appellant may include a request for any special procedures to be used at the hearing; the appeal or request for reconsideration must describe the factual issues to be considered at the hearing.

(b) At the time an appeal is filed, and up until the deadline set out in [11 AAC 02.040](#)(a) to file the appeal, an appellant may submit additional written material in support of the appeal, including evidence or legal argument.

(c) If public notice announcing a comment period of at least 30 days was given before the decision, an appellant may not submit additional written material after the deadline for filing the appeal, unless the appeal meets the

requirements of (a) of this section and includes a request for an extension of time, and the department determines that the appellant has shown good cause for an extension. In considering whether the appellant has shown good cause, the department will consider factors including one or more of the following:

- (1) comments already received from the appellant and others;
- (2) whether the additional material is likely to affect the outcome of the appeal;
- (3) whether the additional material could reasonably have been submitted without an extension;
- (4) the length of the extension requested;
- (5) the potential effect of delay if an extension is granted.

(d) If public notice announcing a comment period of at least 30 days was not given before the decision, an appellant may submit additional written material after the deadline for filing the appeal, if the appeal meets the requirements of (a) of this section and includes a notice of intent to file the additional written material. The department must receive the additional written material within 20 days after the deadline for filing the appeal, unless the appeal also includes a request for an extension of time, and the department determines that the appellant has shown good cause for an extension. In considering whether the appellant has shown good cause, the department will consider factors including one or more of the following:

- (1) comments already received from the appellant and others;
- (2) whether the additional material is likely to affect the outcome of the appeal;
- (3) whether the additional material could reasonably have been submitted without an extension;
- (4) the length of the extension requested;
- (5) the potential effect of delay if an extension is granted.

(e) At the time a request for reconsideration is filed, and up until the deadline to file a request for reconsideration, an appellant may submit additional written material in support of the request for reconsideration, including evidence or legal argument. No additional written material may be submitted after the deadline for filing the request for reconsideration.

(f) If the decision is one described in [11 AAC 02.060\(c\)](#), an appellant may ask for a stay as part of the appeal or request for reconsideration. The appellant must include an argument as to why the public interest requires a stay.

11 AAC 02.040. Timely filing; issuance of decision

(a) To be timely filed, an appeal or request for reconsideration must be received by the commissioner's office within 20 calendar days after issuance of the decision, as determined under (c) or (d) of this section, unless another period is set by statute, regulation, or existing contract. If the 20th day falls on a day when the department is officially closed, the appeal or request for reconsideration must be filed by the next working day.

(b) An appeal or request for reconsideration will not be accepted if it is not timely filed.

(c) If the appellant is a person to whom the department delivers a decision by personal service or by certified mail, return receipt requested, issuance occurs when the addressee or the addressee's agent signs for the decision. If the addressee or the addressee's agent neglects or refuses to sign for the certified mail, or if the address that the addressee provided to the department is not correct,

issuance by certified mail occurs when the decision is deposited in a United States general or branch post office, enclosed in a postage-paid wrapper or envelope, addressed to the person's current address of record with the department, or to the address specified by the appellant under [11 AAC 02.030\(a\)\(11\)](#).

(d) If the appellant is a person to whom the department did not deliver a decision by personal service or certified mail, issuance occurs

- (1) when the department gives public notice of the decision; or
- (2) if no public notice is given, when the decision is signed; however, the department may state in the decision a later date of issuance and the corresponding due date for any appeal or request for reconsideration.

(e) The date of issuance constitutes delivery or mailing for purposes of a reconsideration request under [AS 44.37.011\(d\)](#) or [AS 44.62.540\(a\)](#).

11 AAC 02.050. Hearings

(a) The department will, in its discretion, hold a hearing when questions of fact must be resolved.

(b) The hearing procedure will be determined by the department on a case-by-case basis. As provided in [11 AAC 02.030\(a\)\(13\)](#), any request for special procedures must be included with the request for a hearing.

(c) In a hearing held under this section

- (1) formal rules of evidence need not apply; and
- (2) the hearing will be recorded, and may be transcribed at the request and expense of the party requesting the transcript.

11 AAC 02.060. Stays; exceptions

(a) Except as provided in (c) and (d) of this section, timely appealing or requesting reconsideration of a decision in accordance with this chapter stays the decision during the commissioner's consideration of the appeal or request for reconsideration. If the commissioner determines that the public interest requires removal of the stay, the commissioner will remove the stay and allow all or part of the decision to take effect on the date set in the decision or a date set by the commissioner.

(b) Repealed 9/19/2001.

(c) Unless otherwise provided in a statute or a provision of this title, a decision takes effect immediately if it is a decision to

- (1) issue a permit that is revocable at will;
- (2) approve surface operations for a disposal that has already occurred or a property right that has already vested; or
- (3) administer an issued oil and gas lease or license, or an oil and gas unit agreement.

(d) Timely appealing or requesting reconsideration of a decision described in (c) of this section does not automatically stay the decision. However, the commissioner will impose a stay, on the commissioner's own motion or at the request of an appellant, if the commissioner determines that the public interest requires it.

(e) A decision takes effect immediately if no party is eligible to appeal or request reconsideration and the commissioner waives the commissioner's right to review or reconsider the decision.

11 AAC 02.070. Waiver of procedural violations

The commissioner may, to the extent allowed by applicable law, waive a requirement of this chapter if the public interest or the interests of justice so require.

11 AAC 02.080. Definitions Repealed.

11 AAC 02.900. Definitions

In this chapter,

(1) "appeal" means a request to the commissioner to review a decision that the commissioner did not sign or cosign;

(2) "appellant" means a person who files an appeal or a request for reconsideration;

(3) "commissioner" means the commissioner of natural resources;

(4) "decision" means a written discretionary or factual determination by the department specifying the details of the action to be allowed or taken;

(5) "department" means, depending of the particular context in which the term is used, the Department of Natural Resources, the commissioner, the director of a division within the Department of Natural Resources, or an authorized employee of the Department of Natural Resources;

(6) "request for reconsideration" means a petition or request to the commissioner to review an original decision that the commissioner signed or cosigned.

Section XI – Practice and Procedure

Title 11: Natural Resources

Chapter 88: PRACTICE and PROCEDURE

11 AAC 88.100. Applicability

This chapter applies to [11 AAC 82](#) - [11 AAC 86](#) unless specifically provided otherwise by the sections dealing with the subject of the application, filing or payment.

11 AAC 88.105. Applications

All applications filed under [11 AAC 82](#) - [11 AAC 86](#) must comply with any requirements imposed by the regulations dealing with the subject of the applications, and must

- (1) be typewritten or printed in ink;
- (2) be signed by the applicant;
- (3) be filed by mail or personal delivery at any filing office of the division;
- (4) identify any affected lease, permit, or application by serial number or date of filing;
- (5) describe the land affected by the application;
- (6) state the address to which any notice concerning the application may be mailed; and
- (7) be accompanied by the filing fee or fees prescribed by [11 AAC 05.010](#); this filing fee is retained as a service charge in all cases, including cases in which the application is rejected, denied, or withdrawn in whole or in part.

11 AAC 88.110. Withdrawal of applications

At any time before a lease or permit is issued, the application may be withdrawn in whole or in part. If withdrawn in part, the application as modified must meet all the requirements of the applicable laws and regulations.

11 AAC 88.115. Additional information

The director may require any additional information regarding an applicant's, claimant's, permittee's or lessee's compliance with the statutes and regulations except proprietary data not specifically authorized by other regulation or statute. Failure to comply results in rejection of the application and is a default under the terms of the permit or lease and the regulations applicable to it.

11 AAC 88.120. Deficient filings

- (a) Applications and documents filed with omissions or errors give the applicant no priority if
- (1) the land description is insufficient to identify the land or the description does not comply with the compactness requirements;
 - (2) the total acreage exceeds the maximum established by law or regulation, except where the rule of approximation applies;
 - (3) the total acreage is less than the minimum established by law or regulation;
 - (4) the full filing fee and the first year's rental, where required, is not filed; and
 - (5) the application is not signed by or on behalf of each person having an interest in the application whether by written or oral agreement or contract.

(b) Applications with the defects listed in (a) of this section may be corrected without loss of filing fee if done within 15 days of receipt of notice of the defect, but the time of filing is the date of the receipt of the correct information.

(c) The director may allow the correction of any other omission or error in an application or document other than those listed in (a) of this section without affecting the original filing time if he determines that the omission or error is immaterial or due to excusable inadvertence.

11 AAC 88.125. Time for filing

(a) Filing hours for payments and applications are from 10:00 a.m. to the end of posted office hours on business days, which are Mondays through Fridays, holidays excepted.

(b) Filing hours for all documents to be filed for record in the recording district in which the claim or site is located are from 8:30 a.m. to the end of posted office hours from Monday through Friday, holidays excepted.

(c) All documents, including payments and applications, received during filing hours on business days are stamped with the exact date and time of filing.

(d) Payments and applications received at any other time are filed at 10:00 a.m. on the next business day.

(e) Documents to be filed under (b) of this section received at any other time are considered to be filed at 8:30 a.m. on the next business day.

(f) Applications and documents showing the same time stamp are considered to have been filed simultaneously.

11 AAC 88.130. Timely filing

(a) Payments are timely if an affected lease or permit is identified by an Alaska Division of Lands' serial number, and is either

- (1) delivered at any of the division offices designated by the director as "filing offices" during filing hours within the time allowed by any notice, decision, regulation or law, or
- (2) mailed on or before the due date provided by any notice, decision, regulation or law and the mailing date can be verified by postmark or other post office record or notation.

(b) If the serial number is not identified, as required in (a) of this section, the time of filing is the time of receipt of correct information unless the director determines that the lack of such information is immaterial or due to excusable inadvertence.

(c) All other documents are timely filed if received during filing hours within the time allowed by any notice, decision, regulation, or law at any office designated by the director and posted in the office as a filing office.

(d) When the last day of the time for filing or payment falls on a day the designated filing office is officially closed, the time for filing is extended to the next day the office is open to the public.

11 AAC 88.135. Means of filing

Filings and payments may be made by mail or personal delivery, unless provided otherwise by the section dealing with the subject of the filing or payment.

11 AAC 88.140. Notices

- (a) Any notice which the director gives to any person must be in writing and must be delivered in person or mailed by registered or certified mail, return receipt requested, to the person at his current address of record with the division.
- (b) Any person may file his current mailing address with the division in writing and may change his address of record by written notice filed with the division at any time. "Current mailing address" is the most recent or permanent legal address of an applicant, permittee, lessee or claimant. It is the responsibility of any person doing business with the division to notify the division of his most recent or permanent legal address.
- (c) A notice is considered to be given and received on the date delivered to the current address of record. (d) Whenever any notice is required to be given to a lessee, permittee or claimant, copies of the notice shall also be given, in the manner provided by (a) of this section, to any assignee whose assignment has been filed for approval.

11 AAC 88.145. Refunds

- (a) If an application on which rental has been submitted is rejected or withdrawn in whole or in part, the first year's rental will be refunded in whole or in pro rata part on an acreage basis.
- (b) Notwithstanding any other provision of 11 AAC 82 - 11 AAC 88, no refund will be made for less than \$2.00.

11 AAC 88.150. Mailing list

The division shall maintain a mailing list for the purpose of sending general notices, orders and other information which the director determines to be of public interest regarding mineral activities of the division to persons who file a written request to be put on a list.

11 AAC 88.151. Notice required by AS 38.05.945(c)

- (a) A village corporation will be given notice under AS 38.05.945(c)(3) if it owns or has selected land within six miles of the state land proposed for disposal.
- (b) A community will be given notice under AS 38.05.945(c)(4) if land within its boundaries is no more than six miles from the state land proposed for disposal. A community is an incorporated or unincorporated place with 25 or more inhabitants, according to the most recent census of the U.S. Census Bureau. An incorporated community's boundaries will be those reported to the department by the Local Boundary Commission. An unincorporated community's boundaries will be those delineated by the U.S. Census Bureau in the most recent census.

11 AAC 88.155. Appeal

An eligible person affected by a decision issued under 11 AAC 82 - 11 AAC 86 may appeal that decision in accordance with 11 AAC 02.

11 AAC 88.160. Judicial appeals Repealed 11/7/90.

11 AAC 88.165. Applications for reconsideration and appeal Repealed 11/7/90.

11 AAC 88.170. Briefs Repealed 11/7/90.

11 AAC 88.175. Oral argument Repealed 11/7/90.

11 AAC 88.180. Notice of decision Repealed 11/7/90.

11 AAC 88.185. Definitions

As used in 11 AAC 82 - 11 AAC 88 and unless the context clearly requires a different meaning or unless otherwise defined in these chapters,

- (1) "**adjacent**" means touching or lying in close proximity, as opposed to "contiguous" which requires a common boundary;
- (2) "**cash**" means cashier's or certified checks drawn on any solvent bank in the United States, postal or telegraphic money orders or legal tender of the United States of America, or any combination of these;
- (3) "**commissioner**" means the Commissioner of the Department of Natural Resources;
- (4) "**cooperative agreement**" means an agreement or plan of development and operation for the recovery of oil and gas from any pool, field, or like area or any part thereof in which separate ownership units are independently operated pursuant to the agreement without allocation of production;
- (5) "**director**" means the Director of the Division of Lands;
- (6) "**division**" means the Division of Lands, Department of Natural Resources;
- (7) "**filing office**" means any place designated by the director as a filing office for applications, payments and filings under 11 AAC 82 - 11 AAC 88;
- (8) "**gas**" means all natural gas and all hydrocarbons produced at a well not defined herein as oil;
- (9) "**gas well**" means
- (A) a well which produces natural gas only;
 - (B) that part of a well where the gas producing stratum has been successfully cased off from the oil, and the gas and oil being produced through separate casing or tubing;
 - (C) any well classed as a gas well by the Alaska Oil and Gas Conservation Commission in the administration of the Alaska Oil and Gas Conservation Act;
- (10) "**leasehold location**" or "mining leasehold location" means the interests in land subject to a location under AS 38.05.205 before a lease has been issued;
- (11) "**legal subdivision**" means an aliquot part of a section of land according to the public land rectangular survey system, not smaller than one-quarter of one-quarter of one section of land, containing approximately 40 acres; where a section of land contains section lots, "legal subdivision" also means those section lots; "legal subdivision" also means a protracted legal subdivision according to any protracted public land rectangular survey prepared by the division or Bureau of Land Management of the Department of the Interior, and made available to prospective applicants for leases;
- (12) "**lessee or permittee of record**" means the original lessee or permittee under any lease or permit or, if an assignment has been approved at any time, the latest assignee whose assignment has been approved;
- (13) "**locatable minerals**" means those minerals which, on January 3, 1959, were subject to location under the United States mining laws (30 U.S.C.);
- (14) "**Mineral Leasing Act**" means the Act of Congress of February 25, 1920 (41 Stat. 437, 30 U.S.C. 181 et seq.), as amended;
- (15) "**offshore**" means tide and submerged lands, that is, those lands lying seaward from the line of mean high tide;

(16) "oil" means crude petroleum oil and other hydrocarbons regardless of gravity which are produced and saved in liquid form at the well by ordinary production methods;

(17) "oil well" means any well operated for the primary purpose of producing oil and which by the nature of its production cannot be classed as a gas well as defined in paragraph (6) of this section;

(18) "operating agreement" means an agreement giving the operator the right to carry on operations authorized by a lease or leases and to share in production obtained from the leased lands;

(19) "option" means an option to obtain an assignment of or an operating agreement covering a lease or portion of one;

(20) "order" means a determination made by the director or the commissioner in accordance with authority lawfully vested in him, issued in writing, filed in the permanent files of the division, posted in a conspicuous place in the offices of the division and made continuously available for inspection by the public;

(21) "participating area" means that part of an oil and gas lease unit area to which production is allocated in the manner described in a unit agreement;

(22) "person" includes a corporation and an association of persons;

(23) "pool" means an underground reservoir containing or appearing to contain a common accumulation of oil or gas or both; each zone of a general structure which is completely separated from any other zone in the structure is a pool;

(24) "primary term" means the initial term of an oil and gas lease and any extension of it;

(25) "smallest legal subdivision" means one-quarter of one-quarter of one section of land, containing 40 acres more or less, except where a section contains smaller section lots according to the public land rectangular survey or a protracted public land rectangular survey prepared by the division or by the Bureau of Land Management of the Department of the Interior, and made available to prospective applicants for leases, in which case "smallest legal subdivision" means those smaller section lots; as to unsurveyed land not covered by such a protracted survey, it means a square containing 40 acres, more or less;

(26) "status record" means the basic record maintained by the division to show the status of every tract of land and of leases and applications for leases on them;

(27) "unit agreement" means an agreement or plan of development and operation for the recovery of oil and gas from a pool, field or like area, or any part of one, as a single consolidated unit without regard to separate ownerships, and for the allocation of costs and benefits on a basis as defined in the agreement or plan; "unit agreement" also includes "cooperative agreement" unless the context clearly requires the more restricted meaning;

(28) "unit area" means the area described in a unit agreement as constituting the land logically subject to development under the agreement;

(29) "unit operator" means the person, corporation or association designated under a unit agreement to conduct operations on unitized lands as specified in the agreement;

(30) "unitized land" means the part of a unit area committed to a unit agreement;

(31) "unitized substance" means deposits of oil, gas and associated substances produced with them recoverable by operations pursuant to a unit agreement;

(32) "working interest" means the interest held in lands by virtue of a lease, operating agreement, fee title or otherwise, under which the owner of the interest is vested with the right to explore for, develop and produce minerals; the right delegated to a unit operator by a unit agreement is not a working interest;

(33) "qualified to do business in Alaska" means holding the state certificates necessary to lawfully conduct business within the state;

(34) "leasehold," "mining lease," or "upland mining lease" means the interests in land subject to a mining lease issued in accordance with [AS 38.05.205](#);

(35) "location" or "mining location" means a location on state-selected land authorized under [AS 38.06.275](#), a mining claim made under [AS 38.05.195](#), a leasehold location made under [AS 38.05.205](#) or a prospecting site location made under [AS 38.05.245](#);

(36) "locator" means the initial person to stake or locate a mining location or the current owner of a mining location;

(37) "ADL number" means the serial number assigned by the department to a casefile;

(38) "associated substances" means all substances produced in association with oil or gas and not defined herein as oil or gas;

(39) "mineral" means a naturally occurring substance with a characteristic chemical composition expressed by a chemical formula, including oil and gas.

Section XII: Surface Coal

Title 27. Mining

Chapter 27.21 ALASKA SURFACE COAL MINING CONTROL AND RECLAMATION ACT

Article 1. Legislative Findings and Purpose

Sec. 27.21.010. Findings and declaration of purpose.

(a) The legislature finds and declares that

- (1) the Congress of the United States has enacted the Surface Mining Control and Reclamation Act of 1977, which provides for the establishment of a nationwide program to regulate surface coal mining and reclamation and which vests exclusive authority in the United States Department of the Interior over the regulation of surface coal mining and reclamation within the United States;
- (2) section 101 of the Surface Mining Control and Reclamation Act of 1977 contains the finding by Congress that because of the diversity in terrain, climate, biology, chemistry, and other physical conditions in areas subject to mining operations, primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface coal mining and reclamation operations subject to that Act should rest with the states;
- (3) section 503 of the Surface Mining Control and Reclamation Act of 1977 provides that each state may assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations in the state by obtaining approval of a state program of regulation that demonstrates that the state has the capability of carrying out the provisions and meeting the purposes of the Surface Mining Control and Reclamation Act of 1977;
- (4) section 503 of the Surface Mining Control and Reclamation Act of 1977 provides that a state wishing to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations in the state must have a state law that provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Surface Mining Control and Reclamation Act of 1977; and
- (5) because of unique environmental conditions that the state is best equipped to understand, the state intends to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations in the state under the Surface Mining Control and Reclamation Act of 1977.

(b) The purposes of this chapter are

- (1) to prevent the adverse effects to society and the environment resulting from unregulated surface coal mining operations as defined in this chapter and the regulations adopted under it;
- (2) to assure that the rights of surface land owners and other persons with an interest in the land are protected from unregulated surface coal mining operations;
- (3) to assure that surface coal mining operations are conducted in a manner that will prevent unreasonable degradation of land and water resources;
- (4) to assure that surface coal mining operations are not conducted where reclamation required by this chapter and the regulations adopted under it is not feasible;
- (5) to assure that reclamation of land on which surface coal mining takes place is accomplished as contemporaneously as practicable with the surface coal mining, recognizing that the responsible extraction of coal by responsible mining operators is an essential and beneficial economic activity;
- (6) to assure that appropriate procedures are provided for public participation in the development, revision, and enforcement of regulations, standards, and reclamation plans or programs established under this chapter;
- (7) to assure that the coal supply essential to the nation's energy requirements and to its economic and social well-being is provided and to strike a balance between protection of the environment and other uses of the land and the need for coal as an essential source of energy; and
- (8) to promote the reclamation of areas that were mined and left without adequate reclamation before the enactment of the Surface Mining Control and Reclamation Act of 1977 and that substantially degrade the quality of the environment, prevent the beneficial use of or cause damage to land or water resources, or endanger the health or safety of the public.

Article 02. SURFACE COAL MINING

Sec. 27.21.020. Jurisdiction. The commissioner of natural resources has exclusive jurisdiction over surface coal mining and reclamation operations in the state.

Sec. 27.21.030. General powers. To accomplish the purposes of this chapter, the commissioner may

- (1) in accordance with [AS 44.62](#) (Administrative Procedure Act) adopt, amend, and enforce regulations pertaining to surface coal mining and reclamation operations;
- (2) issue permits;
- (3) conduct hearings and conferences;
- (4) issue orders requiring an operator to take the actions necessary to comply with this chapter and the regulations adopted under this chapter;
- (5) issue orders modifying previous orders;
- (6) after opportunity for a due process hearing, issue a final order revoking the permit of an operator who has failed to comply with an order of the commissioner to take action required by this chapter or regulations adopted under this chapter;

- (7) order the immediate cessation of all or part of a surface coal mining and reclamation operation if the commissioner finds that the operation or part of the operation creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant imminent harm to land, air, or water resources, and, to the extent reasonably necessary to eliminate or alleviate those conditions, take other action or make changes in a permit, as provided in this chapter;
- (8) hire and authorize the hiring of employees and private contractors, subject to the conflict of interest provisions of this chapter and subject to [AS 36.30](#) (State Procurement Code), to assist in carrying out the requirements of this chapter;
- (9) enter and inspect a surface coal mining operation that is subject to the provisions of this chapter to assure that the operation is in compliance with this chapter;
- (10) conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training, and demonstrations;
- (11) prepare reports and require permittees to prepare reports;
- (12) accept, receive, and administer grants, gifts, or other money made available for the purposes of this chapter regardless of the source of the grants, gifts, or money;
- (13) take the steps necessary to allow the state to participate to the fullest extent practicable in the abandoned mine land program provided in Title IV of the Surface Mining Control and Reclamation Act of 1977, including engaging in any work and adopting, amending and enforcing regulations;
- (14) take the actions necessary to establish and maintain exclusive jurisdiction over surface coal mining and reclamation operations in the state under the provisions of the Surface Mining Control and Reclamation Act of 1977, including making recommendations for legislation to clarify or amend this chapter to conform with the terms of the Surface Mining Control and Reclamation Act of 1977;
- (15) contract with state agencies to obtain the professional and technical services necessary to carry out the provisions of this chapter;
- (16) coordinate the review of applications and issuance of permits for surface coal mining and reclamation operations with other federal or state permit processes applicable to those operations;
- (17) enter into cooperative agreements with the Secretary of the United States Department of the Interior for the regulation of surface coal mining operations on federal land in accordance with the Surface Mining Control and Reclamation Act of 1977; and
- (18) perform other duties required by this chapter.

Sec. 27.21.040. Provisions of regulations and permits.

The provisions of a regulation adopted or a permit issued by the commissioner may vary for particular conditions, types of coal being extracted, or areas of the state if the provisions are consistent with the purposes of this chapter.

Sec. 27.21.050. Conflict of interest.

An employee of the department or a private contractor performing a function or duty under this chapter may not have a direct or indirect financial interest in an underground or surface coal mining operation. A person who knowingly violates this section is guilty of a class A misdemeanor.

Sec. 27.21.060. Permits.

- (a) Beginning eight months after May 2, 1983, a person may not conduct a surface coal mining and reclamation operation in the state without a permit for that operation. To receive a permit, a person must apply to the commissioner. The commissioner shall process applications according to this chapter and regulations adopted under it.
- (b) *[Repealed, Sec. 82 ch 6 SLA 1984].*

Sec. 27.21.070. Term of permit.

- (a) Permits will be issued for a term of five years. However, the commissioner may grant a permit for a longer term if the application is complete for that longer term and the applicant demonstrates that the longer term is necessary to allow the applicant to obtain financing for equipment or for the opening of the operation.
- (b) A permit terminates if a permittee does not begin surface coal mining operations under the permit within three years after the permit is issued. The commissioner may grant reasonable extensions of time if the permittee shows that the extensions are necessary
 - (1) because of litigation that precludes the commencement of the operation or threatens substantial economic loss to the permittee; or
 - (2) for reasons beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee is considered to have begun surface mining operations at the time that the construction of the synthetic fuel or generating facility is begun.

Sec. 27.21.080. Renewal of permit.

- (a) A permit issued under this chapter includes the right of successive renewal upon expiration, for areas within the boundaries of the permit area. An opponent of renewal of a permit has the burden of proving that the permit should not be renewed. Subject to (c) of this section, if a permittee applies for renewal of the permit, the commissioner shall renew the permit after public notice is given in the manner provided in [AS 27.21.130](#) unless the commissioner finds, in writing, that

- (1) the terms and conditions of the permit have not been satisfactorily met, and the permittee has not demonstrated to the satisfaction of the commissioner that the permittee is meeting and will continue to meet a schedule set by the commissioner under [AS 27.21.240\(a\)](#) or (b) for correcting a permit violation;
 - (2) the surface coal mining and reclamation operation of the permittee is not in compliance with the environmental protection standards of this chapter and regulations adopted under it;
 - (3) the requested renewal substantially jeopardizes the permittee's continuing responsibility on existing permit areas;
 - (4) the permittee has not either
 - (A) provided sufficient evidence that the performance bond under [AS 27.21.160](#) in effect for the operation will continue for the renewal period requested in the application, and that any additional bond required by the commissioner under [AS 27.21.160](#) will be obtained; or
 - (B) when seeking to use the statewide bonding pool for mining operations established under [AS 27.19.040\(b\)](#), complied with all requirements of the bonding pool; or
 - (5) information required by the commissioner in accordance with this chapter has not been provided by the permittee.
- (b) The commissioner shall provide notice to the appropriate public authorities as provided in [AS 38.05.945](#) before approving a permit renewal.
- (c) If an application for renewal of a permit includes a proposal to extend the permittee's surface coal mining operations to include new land areas beyond the boundaries authorized in the permit, the commissioner shall review the part of the application that addresses the new land areas under the standards established in [AS 27.21.180](#). However, if the surface coal mining operations authorized by a permit are not subject to the standards contained in [AS 27.21.180\(c\)\(5\)\(A\)](#) and (B), the part of the application for renewal that addresses new land areas previously identified in the reclamation plan submitted under [AS 27.21.110](#) is not subject to the standards contained in [AS 27.21.180\(c\)\(5\)\(A\)](#) and (B).
- (d) A permit may be renewed for an additional term of five years. The commissioner must receive the application for a permit renewal at least 120 days before the expiration of the permit.
- (e) If a renewal application is received by the commissioner at least 120 days before the expiration date of the permit, and if the permittee has complied with [AS 27.21.160](#), the permittee may continue surface coal mining operations under the permit after the expiration date of the permit until a final administrative decision on renewal is made.

Sec. 27.21.090. Application fee.

An application for a new permit, permit renewal, or transfer of a permit must be accompanied by an application fee. The commissioner shall adopt regulations setting out a fee schedule. The application fee may not exceed the actual or anticipated costs of reviewing the application.

Sec. 27.21.100. Public information and inspection.

- (a) An applicant for a permit shall file a copy of the application for public inspection at a location designated by the commissioner near the area of the proposed surface coal mining operation. The applicant may exclude from the copy filed under this subsection information that is confidential under (c) of this section.
- (b) Copies of records, permits, inspection materials, data obtained under [AS 27.21.120](#), or other information obtained under this chapter by the commissioner relating to a surface coal mining and reclamation operation, other than information that is confidential under (c) of this section, must be made immediately and conveniently available to the public at the district office of the department closest to the location of the surface coal mining and reclamation operation.
- (c) Information
- (1) gathered from the proposed permit area included in the application for a permit and pertaining to coal seams, test borings, core samplings, or soil samples must be made available to any person with an interest that is or may be adversely affected, except that information that relates only to the analysis of the chemical and physical properties of the coal, other than information regarding the mineral or elemental content that is potentially toxic in the environment, must be kept confidential and not made a matter of public record;
 - (2) in the applicant's reclamation plan relating to the competitive rights of the applicant, including but not limited to trade secrets, commercial or financial information, and geologic information specifically identified as confidential by the applicant and determined by the commissioner to be not essential for public review shall be kept confidential and not be made a matter of public record.

Sec. 27.21.110. Contents of application.

The commissioner shall adopt regulations relating to the contents of an application for a permit under this chapter that include a reclamation plan and liability insurance consistent with the requirements of 30 U.S.C. 1257(b) and 30 U.S.C. 1258, as amended. The regulations must take into account the unique mining and environmental conditions of Alaska.

Sec. 27.21.120. Small operator assistance.

- (a) The provisions of this section apply when the commissioner finds that the probable total annual production of all of the surface coal mining operations of an applicant or, if the applicant is a subsidiary of another corporation, the applicant's parent corporation and its subsidiaries will not exceed 300,000 tons.
- (b) At the written request of an applicant, the commissioner shall
- (1) determine, for each applicant or applicant's parent corporation and subsidiaries, as appropriate, the data that may be necessary in order to
 - (A) evaluate the probable hydrologic consequences of the applicant's surface mining and reclamation operations in the proposed permit area and adjacent areas;

- (B) evaluate the results of test borings on core samplings for the proposed permit area;
- (C) develop cross-section maps and plans, if required;
- (D) fulfill archeological and historic information required by [AS 44.37.040\(3\)](#);
- (E) fulfill all requirements that are imposed on the applicant or the applicant's parent corporation and subsidiaries if, under a regulation adopted under authority of this chapter, the applicant or applicant's parent corporation is required to complete a preblasting survey of nearby dwellings or structures and to prepare a report of the survey; and
- (F) fulfill requirements applicable to collecting site-specific resources information, producing protection and enhancement plans for fish and wildlife habitats and for subsistence uses of the permit area and adjacent areas, and preparing information and plans for any other environmental values; and

(2) to the maximum extent possible with money appropriated, engage, at no cost to the applicant, a qualified laboratory to collect, analyze, and report the results of the data for the tasks set out in (1)(A) - (F) of this subsection.

(c) The collection and analysis of data under (b)(2) of this section may proceed concurrently with the applicant's development of a reclamation plan.

Sec. 27.21.130. Public notice of application.

At the time an applicant submits an application for a permit or for a revision of a permit, the applicant shall give notice in the manner set out in [AS 38.05.945\(b\)](#) and (c) except as may be provided otherwise by regulations adopted under this chapter.

Sec. 27.21.140. Objection to application; informal conference.

(a) A person who is or may be adversely affected by the issuance or revision of a permit or a federal, state or municipal agency may file written comments or objections to the permit or revision with the commissioner within 30 days after the last publication of the notice required in [AS 27.21.130](#) and may include with the objection a request for an informal conference.

(b) The commissioner shall immediately provide a copy of any comments or objections filed under (a) of this section to the applicant and shall make them available to the public. If an informal conference is requested under (a) of this section, the commissioner shall hold an informal conference in the locality of the operations proposed in the application. Notice requirements and procedures for informal conferences must be set out in regulations adopted under this chapter.

(c) The commissioner shall notify the applicant, any person who filed a comment or objection under (a) of this section, and any participant in an informal conference held under (b) of this section, in writing, of the decision to grant, condition, modify, or deny the permit or revision, and, if the decision is not to grant the permit or revision, of the specific reasons for the decision. The commissioner shall provide notification of the decision within 60 days after an informal conference or, if there has not been an informal conference, within the time established in [AS 27.21.180](#).

(d) If the application is approved, the permit shall be issued upon filing of the performance bond required by [AS 27.21.160](#) or satisfactory compliance with the requirements of the statewide bonding pool for mining operations established under [AS 27.19.040\(b\)](#).

Sec. 27.21.150. Hearings.

(a) Within 30 days after an applicant is notified under [AS 27.21.140\(c\)](#) of the commissioner's decision concerning the application, the applicant or a person who is or may be adversely affected by the decision may request a hearing to review the reasons for the decision. The commissioner shall hold the hearing within 30 days after the request and shall notify the interested parties of the hearing at the time the applicant is notified. [AS 44.62](#) (Administrative Procedure Act) applies to a hearing under this section except as provided by regulations adopted under this chapter.

(b) If a hearing is requested under (a) of this section, the commissioner may, under conditions the commissioner prescribes, grant appropriate temporary relief pending the commissioner's final decision if

- (1) the parties to the hearing have been notified and given an opportunity to be heard on a request for temporary relief;
- (2) the party requesting the temporary relief shows that there is a substantial likelihood that the party will prevail in the final decision of the hearing; and
- (3) the temporary relief will not adversely affect the public health or safety or cause significant imminent harm to land, air, or water resources.

(c) The person presiding at the hearing may administer oaths, subpoena witnesses, subpoena written or printed materials, compel the attendance of witnesses or the production of materials, and take evidence including but not limited to evidence derived from site inspections of the land that will be affected by the permit or revision and other surface coal mining operations conducted by the applicant in the general vicinity of the operation proposed in the application. On the motion of a party or by order of the commissioner, a verbatim record of a hearing required by this chapter shall be made and a transcript made available.

Sec. 27.21.160. Performance bond; exceptions.

(a) Except as provided in (c) and (g) of this section, after an application for a permit has been approved and before the permit may be issued, the applicant must file with the commissioner, on a form prescribed and furnished by the commissioner, a performance bond payable to the State of Alaska and conditioned on faithful performance of the requirements of this chapter and the permit. The bond must cover the area of land within the permit area on which the applicant will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are initiated and conducted within the permit area, the permittee shall provide an additional bond or bonds to cover those increments in accordance with this section. The amount of the bond required for an area within the permit area shall be determined by the commissioner and shall reflect the probable difficulty of the reclamation considering the topography, geology, hydrology, revegetation potential, and similar factors relating to the area. The amount of

the bond must be sufficient to assure the completion of the reclamation plan by the commissioner in the event of forfeiture and, for the entire permit area, may not be less than \$10,000.

(b) Liability under the bond must exist for the duration of the surface coal mining and reclamation operation and for the period of time of the permittee's responsibility under the performance standards established by regulation under [AS 27.21.210](#). The bond shall be executed by the applicant and, except as provided in (d) of this section, a corporate surety licensed to do business in the state.

(c) An applicant may deposit with the commissioner cash, negotiable bonds of the United States or of the state, or negotiable certificates of deposit of a bank organized or transacting business in the United States to satisfy the requirements of (a) of this section if

(1) the value of the deposit is equal to or greater than the amount of the bond required under (a) of this section;

(2) liability under the deposit is for a period of time described in (b) of this section; and

(3) the deposit is made under the terms that, under (a) of this section, would apply to a performance bond.

(d) The commissioner may accept a bond executed by the applicant without separate surety if the applicant demonstrates to the satisfaction of the commissioner that the applicant has sufficient financial means for the purposes of the bond. The commissioner shall adopt regulations to implement this section.

(e) The commissioner shall maintain a deposit under (c) of this section in a separate escrow account and shall annually pay the interest accruing on the deposit to the permittee.

(f) The commissioner shall adjust the amount required under (a), (c), or (d) of this section and the terms of the acceptance of that amount if the commissioner determines there is good cause, including changes in affected land areas or in the probable cost of future reclamation, for the adjustment.

(g) As an alternative to performance bonds, applicants conducting surface coal mining and reclamation operations may use the bonding pool established by the commissioner under [AS 27.19.040](#)(b) for reclamation activities to meet the requirements imposed by this section.

Sec. 27.21.170. Request and release of performance bonds or deposits.

(a) A permittee may file a request with the commissioner for the release of all or part of the permittee's performance bonds or deposit. The permittee shall give notice in the manner set out in [AS 38.05.945](#)(b) and (c) except as provided by regulations adopted under this chapter.

(b) Within 30 days after receipt of a request under (a) of this section or within a longer period required by field conditions, the commissioner shall inspect and evaluate the reclamation work involved. In the evaluation, the commissioner shall consider the degree of difficulty to complete the reclamation, whether pollution of surface or subsurface water is occurring, the probability of continuance of the pollution, and the estimated cost of abating the pollution. Within 60 days after receipt of the request, or if a hearing relating to the request is conducted under (g) of this section, within 30 days after the hearing, whichever is later, the commissioner shall notify the permittee, in writing, of the decision to release or not to release all or part of the performance bond or deposit.

(c) The commissioner shall release all or part of the bond or deposit in accordance with the following schedule if the commissioner is satisfied that the reclamation or part of the reclamation covered by the bond or deposit has been accomplished as required by this chapter:

(1) if the permittee completes the backfilling, regrading, and drainage control of all or part of a permit area according to the reclamation plan, the commissioner shall release 60 percent of the bond or deposit covering the area;

(2) if the permittee completes revegetation of all or part of the permit area according to the reclamation plan, the commissioner shall release the balance of the bond or deposit covering the revegetated area except for an amount that would be necessary to hire a third party to reestablish revegetation;

(3) if the permittee successfully completes all of the surface coal mining and reclamation activities required by this chapter and the terms of the permit, the commissioner shall release the remaining portion of the bond after expiration of the period of time of the permittee's responsibility under the performance standards established by regulation under [AS 27.21.210](#); however, a bond or deposit may not be fully released until all reclamation requirements are fully met.

(d) The commissioner may not release all or part of a bond or deposit under (c)(2) of this section if

(1) the permit area or part of a permit area covered by the bond or deposit is in violation of the performance standards established by regulation under [AS 27.21.210](#); or

(2) a silt dam is to be retained as a permanent water impoundment under the performance standards established by regulation under [AS 27.21.210](#) and the permittee has not, in the determination of the commissioner, made adequate provisions for the sound future maintenance of the silt dam.

(e) If the commissioner disapproves a request filed under (a) of this section, the commissioner shall notify the permittee of the decision in writing. The notice must include the reasons for the disapproval, a description of the actions necessary to secure the release, and notification of the permittee's right to a hearing under (g) of this section.

(f) If a request is filed with the commissioner under (a) of this section, the commissioner shall notify the appropriate municipality, if any, at least 30 days before the release of all or part of the bond or deposit.

(g) A person with a valid legal interest that might be adversely affected by release of a bond or deposit under this section or a federal, state, or municipal agency that has jurisdiction over an environmental, social, or economic impact involved in the permittee's operation or that has authority to develop and enforce environmental standards with respect to the permittee's operation, may, within 30 days after the last publication of notice required by (a) of this section, file written objections to the request with the commissioner and may request a hearing. A permittee whose request for release of all or part of a bond or deposit is disapproved may request a hearing within 30 days after receipt of written notification of the disapproval under (e) of this section. If a hearing is requested, the commissioner shall inform the interested parties of the time and place of the hearing

and shall hold the hearing within 30 days after the request for the hearing. The commissioner shall publish the date, time, and location of the hearing in a newspaper of general circulation in the locality for two consecutive weeks. The commissioner shall conduct the public hearing and any appeal according to the [AS 44.62](#) (Administrative Procedure Act) except as provided by regulations adopted under this chapter.

Sec. 27.21.180. Application approval or denial.

(a) Within 120 days after receipt of a complete application for a permit or for revision or renewal of a permit, the commissioner shall grant, condition, modify, or deny the application and notify the applicant in writing of the commissioner's action. The applicant has the burden of establishing that the application complies with the requirements of this chapter and the regulations adopted under it. Within 10 days after approving an application, the commissioner shall record in the recording district in which the permit area is located notice that a permit has been issued. The notice must describe the location of the permit area and state where a copy of the permit may be obtained.

(b) If the commissioner requests modification of an application, the commissioner shall state in writing which parts need modification and in what manner, and which parts of the application meet approval. The applicant will then need only to correct the deficient portion and resubmit the application. However, the commissioner may at any time require additional information from the applicant if the requirement is based on good cause and on a written finding that the additional information is necessary for the commissioner to determine whether the proposed operation will meet the requirements of this chapter and the regulations adopted under it. After receipt of the information requested, the commissioner has 60 days to approve, condition, or deny the permit as described in (a) of this section.

(c) The commissioner may not approve an application for a permit or for revision of a permit unless the application demonstrates and the commissioner finds, in writing and on the basis of information included in the application or information that is otherwise available to the commissioner and that the commissioner documents in the approval and makes available to the applicant, that

- (1) the application is accurate and complete and that it complies with the requirements of this chapter and regulations adopted under this chapter;
- (2) the applicant has demonstrated that reclamation as required by this chapter and regulations adopted under it can be accomplished under the reclamation plan contained in the application;
- (3) an assessment of the probable cumulative impact of all anticipated surface coal mining in the area on the hydrologic balance has been made by the commissioner, and that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;
- (4) the area proposed to be mined is not included within an area that
 - (A) is designated as unsuitable for surface coal mining under [AS 27.21.260](#); or
 - (B) is being considered by the commissioner for designation in an administrative proceeding commenced under [AS 27.21.260](#), unless the applicant demonstrates that before January 1, 1977, the applicant made substantial legal and financial commitments in relation to the proposed operation for which the applicant is applying for a permit;
- (5) the proposed surface coal mining operation will not
 - (A) interrupt, discontinue, or preclude farming on an alluvial valley that is irrigated or naturally subirrigated, excluding undeveloped range land that is not significant to farming on the alluvial valley floor and land on which the farming that will be interrupted, discontinued, or precluded is so small as to have negligible impact on the farm's total agricultural production; or
 - (B) materially damage the quantity or quality of water in surface or underground water systems that supply an alluvial valley floor; and
- (6) if the ownership of the coal in the permit area has been severed from the private surface estate, the applicant has submitted to the commissioner
 - (A) the written consent of the surface owner to the extraction of the coal by surface mining methods;
 - (B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or
 - (C) a determination of a court that the applicant is authorized to extract coal by surface mining methods in the permit area; however, nothing in this chapter may be construed to authorize the commissioner to adjudicate property rights disputes.

(d) The provisions of (c)(5) of this section do not apply to a surface coal mining operation that, in the 12-month period preceding August 3, 1977, produced coal in commercial quantities and was located within or adjacent to an alluvial valley floor.

(e) An applicant shall file with an application a list of all cited violations of this chapter and all cited violations of a law, rule, or regulation of the United States, the state, or a department or agency of the United States pertaining to air or water environmental protection received by the applicant in connection with a surface coal mining operation within the United States during the three-year period before the date of filing the application. The list must indicate the final resolution, if any, of the violations. If the list or other information available to the commissioner indicates that a surface coal mining operation owned or controlled by the applicant is currently in violation of this chapter or of a law, rule, or regulation described in this subsection, the commissioner may not approve the application until the applicant submits proof that

- (1) the violation has been corrected or is being corrected to the satisfaction of the commissioner or to the satisfaction of the agency responsible for the enforcement of the law, rule, or regulation if the violation is not of this chapter; or
- (2) the applicant is involved in an administrative or judicial proceeding to determine whether the applicant has committed the violation.

(f) The commissioner may not approve an application under this section if the commissioner finds, after providing the applicant with an opportunity for a hearing in accordance with the procedures established in [AS 27.21.150](#), that the applicant,

or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of wilful violations of this chapter of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with this chapter.

Sec. 27.21.190. Revision and transfer of permit.

- (a) During the term of a permit, the permittee may submit to the commissioner an application for revision of the permit, with necessary revisions to the permittee's reclamation plan.
- (b) The commissioner may not approve an application for revision of a permit unless the commissioner finds that reclamation required by this chapter and the regulations adopted under it can be accomplished under the necessary revisions to the reclamation plan. The commissioner shall establish guidelines for determining the extent of revision for which all permit application requirements and procedures, including notice and hearing, shall apply. A revision that, in the commissioner's determination, requires significant revisions to the applicant's reclamation plan must, at a minimum, be subject to a notice and hearing requirement.
- (c) A permittee may not apply under this section for an extension of the permit area, except by incidental boundary revision.
- (d) A permittee may not transfer, assign, or sell a permit or the rights granted under a permit without the written approval of the commissioner. A successor in interest to a permittee may continue the surface coal mining and reclamation operation of the permittee until the successor's transfer application is granted or denied if the successor
 - (1) applies for a new permit within 30 days of succeeding to that interest; and
 - (2) obtains the same bond coverage as the permittee.
- (e) After the commissioner issues a permit, the commissioner shall, within a time limit established by regulation, review the permit and may, for good cause, require reasonable revisions of the permit during the term of the permit. A revision under this subsection must be based on a written finding of the commissioner relating to the need for the revision and is subject to notice and hearing requirements established by the commissioner by regulation.

Sec. 27.21.200. Coal exploration permits.

- (a) A person may conduct coal exploration activities that substantially disturb the natural land surface only according to regulations adopted by the commissioner. Before conducting the coal exploration activities, the person shall file with the commissioner a notice of intent to explore that includes a description of the exploration area and the period of proposed exploration.
- (b) The regulations adopted by the commissioner under (a) of this section must include provisions for reclamation, according to the performance standards established under [AS 27.21.210](#), of land disturbed by the coal exploration activities, including reclamation of excavations, roads, and drill holes, and the removal of facilities and equipment.
- (c) The commissioner shall keep information submitted to the commissioner under this section confidential upon request of the person submitting the information if the information is a
 - (1) trade secret or relates to a trade secret; or
 - (2) privileged competitive right of the applicant for the coal exploration permit.
- (d) A person who conducts a coal exploration activity that substantially disturbs the natural land surface in violation of the requirements of this section or regulations adopted under this section is subject to the provisions of [AS 27.21.240](#).
- (e) A person may not remove more than 250 tons of coal under a coal exploration permit without the specific written approval of the commissioner.

Sec. 27.21.210. Performance standards.

The commissioner shall adopt regulations consistent with the environmental performance standards of the Surface Mining Control and Reclamation Act of 1977 and the regulations promulgated under that Act for both surface coal mining and reclamation operations and surface effects of underground mining with appropriate adjustments to the special physical, hydrological, biological, and climatic conditions in the state. All permits issued under this chapter shall require that surface coal mining and reclamation operations and coal exploration activities must comply with those environmental performance standards.

Sec. 27.21.220. Surface effects of underground coal mining.

- (a) The provisions of this chapter apply to the surface effects of underground coal mining. However, the commissioner shall consider the inherent difference between underground mining and surface mining in adopting regulations under this chapter that apply to underground mining.
- (b) In order to protect the stability of the land, the commissioner shall suspend underground coal mining under municipalities or communities and adjacent to industrial or commercial buildings, major impoundments, or permanent streams, if the commissioner finds imminent danger to inhabitants of the municipalities or communities.

Sec. 27.21.230. Inspections and monitoring.

- (a) The commissioner shall provide for an inspection of a surface coal mining and reclamation operation to evaluate compliance with this chapter, and, for that purpose, an authorized representative of the commissioner may enter the surface coal mining and reclamation operation. The commissioner shall, to the extent possible, coordinate the inspection and monitoring activities with other agencies having responsibilities with regard to the operation.
- (b) In administering and enforcing this chapter or determining whether a person is in violation of this chapter
 - (1) the commissioner may require a permittee to
 - (A) establish appropriate records and maintain them in the state;

- (B) make monthly reports to the commissioner;
- (C) install, use, and maintain necessary monitoring equipment or methods;
- (D) evaluate results in accordance with the methods, at the locations and intervals, and in the manner the commissioner prescribes; and
- (E) provide other information relating to the permittee's operations as the commissioner considers reasonable and necessary;

(2) for a surface coal mining and reclamation operation that removes or disturbs strata that serve as aquifers that significantly ensure the hydrologic balance of water use either on or off the site of the operation, the commissioner may specify

- (A) monitoring sites for the use of equipment and methods under (1)(C) of this subsection to record
 - (i) the quantity and quality of surface drainage above and below the site of the operation as well as in the area potentially affected by the operation;
 - (ii) level, amount, and samples of ground water and aquifers that are potentially affected by the operation, and ground water and aquifers that are directly below the deepest coal seam to be mined under the operation; and
 - (iii) precipitation at the site of the operation; and

(B) the records of well logs and borehole information that a permittee must maintain;

(3) the authorized representatives of the commissioner, without advance notice and upon presentation of appropriate credentials, may enter an operation or premises in which records required to be maintained under this section are located and may at reasonable times, and without delay, have access to and copy the records and inspect monitoring equipment or an operating method required under this chapter.

(c) Inspection by the commissioner under (b)(3) of this section shall

(1) occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter; and

(2) occur without prior notice to the permittee or the permittee's agents, except as provided in (e) of this section.

(d) After conducting an inspection under (b)(3) of this section, an inspector shall file with the commissioner, and the commissioner shall maintain, an inspection report adequate to assist the commissioner in enforcing the requirements of this chapter and carrying out the terms and purposes of this chapter.

(e) A representative of the permittee who is at the site of the operation at the time an inspection under (b)(3) of this section begins may accompany the inspector during the inspection. The inspector shall notify the representative of the permittee of the permittee's right under this subsection before beginning the inspection.

(f) A permittee shall conspicuously maintain at the entrances to the operation a clearly visible sign that states the name, business address, and phone number of the permittee and the permit number of the operation.

(g) An inspector, upon detection of a violation of this chapter, shall immediately report the violation to the operator and to the commissioner in writing.

(h) A person who is or may be adversely affected by a surface coal mining operation may notify the commissioner, in writing, of a violation of this chapter that the person has reason to believe exists at the site of the surface coal mining operation. The commissioner shall, by regulation, establish procedures for review of a refusal by a representative of the commissioner to issue a notice of violation or cessation order with respect to the alleged violation. The commissioner shall furnish a person requesting the review with a written statement of the commissioner's findings and reasons for the findings.

(i) The commissioner shall, by regulation, establish procedures to ensure that adequate and complete inspections are made under this section. Any person who is or may be adversely affected by a surface coal mining operation may notify the commissioner of a failure to make an adequate or complete inspection under this section. If the commissioner receives notification from a person under this subsection, the commissioner shall investigate the inspection and shall furnish the person with a written determination and the reasons for the determination.

Sec. 27.21.240. Enforcement.

(a) If, on the basis of an inspection under [AS 27.21.230](#), the commissioner determines that a person or a person's operation is in violation of this chapter or a term of a permit and that the violation creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant, imminent, environmental harm to land, air, or water resources, the commissioner shall immediately issue a notice of violation and order a cessation of the person's surface coal mining operation or the portion of the operation relating to the violation. The cessation order remains in effect until the commissioner determines that the violation has been abated, or until modified, vacated, or terminated under (d) or (h) of this section. If the commissioner finds that the ordered cessation of the operation, or a portion of the operation, will not completely abate the imminent danger to the health or safety of the public or the significant, imminent, environmental harm to land, air, or water resources, the commissioner shall, in addition to the cessation order, impose affirmative obligations on the operator to take the steps the commissioner considers necessary to abate the imminent danger or significant environmental harm.

(b) If, on the basis of an inspection, the commissioner determines that a person or a person's operation is in violation of this chapter or a term of a permit and that the violation does not create an imminent danger to the health or safety of the public and is not causing and cannot reasonably be expected to cause significant, imminent, environmental harm to land, air, or water resources, the commissioner shall issue a notice of violation to the permittee setting a reasonable time, which may not exceed 90 days from the date the notice is issued, for the abatement of the violation. However, the commissioner may, for good cause, extend the time for the abatement of the violation. If, at the end of the time allowed for abatement of the violation, the commissioner finds, in writing, that the violation has not been abated, the commissioner shall order a cessation of the person's surface coal mining operation or the portion of the operation relating to the violation. The cessation order remains in effect

until the commissioner determines that the violation has been abated or until it is modified, vacated, or terminated under (d) or (h) of this section. The commissioner shall determine the steps necessary to abate the violation in the most expeditious manner possible and shall include the necessary measures in the cessation order issued under this section.

(c) A person who is or may be adversely affected by a notice of violation or cessation order issued under (a) or (b) of this section, or by a modification, vacation, or termination of the notice or order, may apply to the commissioner for review of the notice or order within 60 days after receipt of the notice or order by the operator or permittee or within 60 days after the modification, vacation, or termination of the notice or order. On receipt of the application, the commissioner shall provide for an investigation and an investigation report, as the commissioner considers appropriate. At the request of the applicant or another person who is or may be adversely affected, the commissioner shall provide for a public hearing to enable the applicant to present information relating to the notice or order or the modification, vacation, or termination of the notice or order. The filing of an application for review under this subsection may not operate as a stay of the order or notice. The commissioner shall give the applicant and other interested persons written notice of the time and place of the hearing at least five days before the hearing. The Administrative Procedure Act ([AS 44.62](#)) applies to a hearing under this subsection except as provided by regulations adopted under this chapter.

(d) After any review under (c) of this section, the commissioner shall issue a written decision that includes findings of fact and an order vacating, affirming, modifying, or terminating the notice or order. If the application for review under (c) of this section relates to a cessation order issued under (a) or (b) of this section, the commissioner shall issue the written decision within 30 days after receipt of the application for review unless the commissioner grants a request for temporary relief under (e) of this section.

(e) An applicant for review under (c) of this section may file with the commissioner a written request for temporary relief from a notice or order issued under (a) or (b) of this section before completion of the review of the notice or order. The written request must include a detailed statement of the reasons in support of the request. The commissioner shall expeditiously issue an order granting or denying the temporary relief. If the applicant requests temporary relief from a cessation order issued under (a) or (b) of this section, the commissioner shall issue an order granting or denying the temporary relief within 10 days after the commissioner receives the written request. The commissioner may grant the temporary relief under this subsection only

- (1)** after the commissioner holds a hearing in the locality of the permit area on the request for temporary relief in which the parties have an opportunity to be heard;
- (2)** if the applicant shows that there is substantial likelihood that the findings of the commissioner under (d) of this section will be favorable to the applicant; and
- (3)** if the temporary relief will not adversely affect the health or safety of the public or cause significant, imminent, environmental harm to land, air, or water resources.

(f) If, on the basis of an inspection, the commissioner has reason to believe that a pattern of violations of this chapter or of a term of a permit exists or has existed, and if the commissioner finds that the violations are caused by the unwarranted failure of the permittee to comply with the requirements or that the violations were wilfully caused by the permittee, the commissioner shall issue a notice of violation and an order to the permittee to, within a specified time period, show cause why the permit should not be suspended or revoked. The order to show cause must include notice to the permittee that a hearing may be requested within 30 days.

(g) If the permittee requests a hearing under (f) of this section, the commissioner shall inform the permittee and other known interested persons of the time, place, and date of the hearing. [AS 44.62](#) (Administrative Procedure Act) applies to a hearing under this subsection except as provided by regulations adopted under this chapter. Within 60 days following the hearing or following the order to show cause if no hearing is requested, the commissioner shall issue and furnish to the permittee and all other parties to the hearing a written decision, order, and the reasons for both, concerning the suspension or revocation of the permit. If the commissioner suspends or revokes the permit, the permittee shall immediately cease the surface coal mining operation on the permit area and shall complete the reclamation of the permit area within the time specified by the commissioner. If the permittee fails to complete the reclamation, the commissioner shall declare the performance bonds for the operation forfeited.

(h) A notice or order issued under this section shall state with reasonable specificity the nature of the violation, the abatement required, the period of time established for abatement, and a reasonable description of the portion of the operation to which the notice or order applies. Each notice or order issued under this section must be given promptly to the alleged violator at the mine site unless the alleged violator has appointed an agent, in which case the agent may be served. A notice or order issued under this section may be modified, vacated, or terminated by the commissioner. A cessation order issued under (a) or (b) of this section expires not more than 30 days after the alleged violator receives actual notice of the order unless an informal conference is held as provided in regulations adopted under this chapter or unless the right to such a conference is waived by the alleged violator. The commissioner shall hold the conference at a location that allows the permit area to be viewed during the conference. The commissioner shall issue a written order affirming, modifying, vacating, or terminating the cessation order within five days of the conference. The holding of a conference or the waiver of it does not prejudice any other rights to administrative or judicial review provided under this chapter nor does it operate as a stay of a notice or order.

(i) Whenever an order is issued under this chapter, the commissioner may, in the commissioner's discretion, assess any party for the costs and attorney fees reasonably incurred by another party in connection with the order.

(j) The commissioner may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or other appropriate order, if a person

- (1)** violates an order or notice issued by the commissioner under this chapter;
- (2)** interferes with the commissioner carrying out the provisions of this chapter;
- (3)** unlawfully refuses to admit the commissioner into an operation;
- (4)** unlawfully refuses to permit inspection of an operation by the commissioner;

(5) fails to furnish information or a report requested by the commissioner under regulations adopted under this chapter; or

(6) refuses to permit access to or copying of records by the commissioner that the commissioner determines are reasonably necessary to carry out the provisions of this chapter.

(k) An action under (j) of this section shall be brought in the superior court in the judicial district in which the greater portion of the operation is located or in the judicial district where the operator's principal office is located. The superior court has jurisdiction to grant appropriate relief under (j) of this section. Relief granted by a superior court for a situation described in (j)(1) of this section continues in effect until the completion of proceedings for review of the notice or order under this section unless before that time the superior court modifies or sets aside the notice or order.

(l) In the case of a judicial proceeding to review an order or decision issued by the commissioner under this chapter, the court may, under conditions it may prescribe, grant the temporary relief it considers appropriate pending final determination of the proceedings if

(1) all parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(2) the person requesting the relief shows that there is a substantial likelihood that the person will prevail on the merits of the final determination of the proceeding; and

(3) the relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(m) The commencement of a judicial proceeding to review an order or decision of the commissioner does not, unless specifically ordered by the court, operate as a stay of the action, order, or decision of the commissioner.

(n) The fact that action of the commissioner is subject to judicial review in accordance with other provisions of state law may not be construed to limit the operation of the rights established in [AS 27.21.950](#) except as provided in that section.

Sec. 27.21.250. Penalties.

(a) The commissioner may assess a civil penalty against a person if the person or the person's operation violates a condition of a permit or a provision of this chapter. If as a result of the violation the commissioner issues a cessation order under [AS 27.21.240](#), the commissioner shall assess a civil penalty. The civil penalty may not exceed \$5,000 for a violation. The commissioner may consider each day of a continuing violation as a separate violation for the purposes of this subsection. In determining whether to assess and the amount of a civil penalty, the commissioner shall consider the person's history of previous violations at the site of the operation, the seriousness of the violation, including the irreparable harm done to the environment and the hazard created to the health or safety of the public, the person's negligence, and the good faith of the person in attempting to achieve rapid compliance after receiving notification of the violation.

(b) Within 30 days after issuing a notice or order under [AS 27.21.240](#) to a person, the commissioner shall inform the person of the amount of the penalty. The person notified of the penalty then has 30 days in which to pay the penalty in full or to contest either the amount of the penalty or the fact of the violation. If the person wishes to contest either the amount of the penalty or the fact of the violation, the person may submit to the commissioner a bond equal to the penalty amount at the time the person files an application for review. The bond shall be conditioned for the satisfaction of the penalty in full if the commissioner's determination of an occurrence of a violation and the assessment of a penalty are affirmed. An application for review is effective when the bond is approved by the commissioner. If the bond is not approved, the person charged with the penalty shall forward the proposed amount to the commissioner within 10 days of the disapproval of the bond for placement in an escrow account in order to make the petition effective.

(c) The commissioner shall assess a civil penalty under (a) of this section only after the person charged with a violation has been given an opportunity for a public hearing. If a public hearing is held, the commissioner shall make findings of fact and shall issue a written decision relating to the occurrence of the violation and the amount of the civil penalty that is warranted. The written decision may order the person to pay the penalty. The commissioner may consolidate a hearing under this section with other proceedings under [AS 27.21.240](#). [AS 44.62](#) (Administrative Procedure Act) applies to a hearing under this subsection except as provided by regulations adopted under this chapter. If the person notified of a penalty does not request a public hearing, the commissioner may assess the penalty and order its payment only after the commissioner has determined that the person committed the violation and has determined the amount of the penalty that is warranted.

(d) A civil penalty owed under this section may be recovered in a civil action brought by the attorney general at the request of the commissioner.

(e) A person other than a corporation who wilfully and knowingly violates a condition of a permit, an order issued under [AS 27.21.240](#), or an order incorporated in a final decision under this chapter, except an order incorporated in a decision issued under (c) of this section, is guilty of a class C felony.

(f) If a corporation violates a condition of a permit, an order issued under [AS 27.21.240](#), or an order incorporated in a final decision issued by the commissioner under this chapter, except an order incorporated in a decision issued under (c) of this section, a director, officer, or agent of the corporation who wilfully and knowingly authorized, ordered, or carried out the violation is subject to a civil penalty under (a) - (d) of this section and is guilty of a class C felony.

(g) A person who knowingly makes a false statement, representation, or certification, or knowingly fails to make a required statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained under this chapter is guilty of a class C felony.

(h) A person who fails to correct a violation for which a notice of violation or a cessation order has been issued under [AS 27.21.240](#) within the period or subsequent extension permitted for its correction shall be assessed a civil penalty of \$750 for each day the failure or violation continues. The period for correction continues until

- (1) the entry of a final order by the commissioner in a review proceeding initiated by the alleged violator in which the commissioner orders, after an expedited hearing, the suspension of the abatement requirements of the notice or order after determining that the alleged violator will suffer irreparable loss or damage from the application of those requirements; or
 - (2) the entry of an order of the court in a review proceeding under [AS 44.62](#) initiated by the alleged violator in which the court orders the suspension of the abatement requirements of the notice or order.
- (i) A person who, except as permitted by law, wilfully resists, prevents, impedes, or interferes with the commissioner in the performance of duties under this chapter is guilty of a class C felony.

Sec. 27.21.260. Areas unsuitable for surface coal mining.

- (a) The commissioner shall use competent and scientifically sound data and information in order to make objective decisions as to which areas of land are unsuitable for all or certain types of surface coal operations. The decisions shall
- (1) reflect the planning activities of federal, state, and municipal governments; and
 - (2) use a data base and inventory system that will permit the evaluation of areas of the state to support and permit reclamation of surface coal mining operations.
- (b) A person or municipality having an interest that is or may be adversely affected may file a petition with the commissioner to designate an area as unsuitable for mining or to terminate a designation under this section. The petition must contain allegations of facts with supporting evidence that would tend to establish the allegations. Within three to seven months after receipt of a petition, the commissioner shall hold a public hearing in the locality of the area, under regulations adopted by the commissioner. The commissioner may extend the time within which a hearing must be held if an extension is required to include a field season. After the filing of a petition and before the hearing, other persons may intervene by filing allegations of fact with supporting evidence. Within 60 days after the hearing, the commissioner shall issue and furnish to the petitioner and intervenors a written decision regarding the petition and the reasons for the commissioner's decision. The commissioner may cancel the hearing if the parties all agree to the cancellation.
- (c) Upon receipt of a petition under (b) of this section, the commissioner
- (1) shall designate an area as unsuitable for all or certain types of surface coal mining operations if the commissioner determines that reclamation in accordance with this chapter and regulations adopted under it is not technologically feasible in the area;
 - (2) may designate an area as unsuitable for all or certain types of surface coal mining operations if the commissioner determines that the operations in the area will
 - (A) be incompatible with existing state or local land use programs;
 - (B) affect fragile or historic land in which the operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems;
 - (C) affect aquifer recharge areas or other renewable resource land in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or food or fiber products; or
 - (D) affect areas subject to frequent flooding and areas of unstable geology, or other natural hazard land in which the operations could substantially endanger life and property.
- (d) Subject to valid existing rights, the commissioner may not permit surface coal mining operations except those that existed on August 3, 1977,
- (1) on any land within the boundaries of a unit of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, and National Recreation Areas designated by Act of Congress;
 - (2) that will adversely affect a publicly owned park or a place included in the National Register of Historic Sites unless approved jointly by the commissioner and the federal, state, or local agency that has jurisdiction over the park or the historic site;
 - (3) within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join the right-of-way line, and except that the commissioner may permit roads to be relocated or the area affected to lie within 100 feet of a road, if after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected by it will be protected; or
 - (4) within 300 feet from any occupied dwelling, unless waived by the owner of the dwelling, or within 300 feet of a public building, school, church, community, institutional building, or public park, or within 100 feet of a cemetery.
- (e) Before designating an area as unsuitable under this section, the commissioner shall prepare a detailed statement of the potential coal resources of the area, the demand for coal resources, and the impact of the designation on the environment, the economy, and the supply of coal.
- (f) Determinations of unsuitability of land for surface coal mining must consider present and future land use planning and regulation processes at the federal, state, and local levels.
- (g) This section does not apply to land on which a surface coal mining operation was conducted on or before August 3, 1977, or under a permit issued under this chapter before a determination of unsuitability. This section does not apply to an area if a person had made substantial legal or financial commitments for an operation or proposed operation in that area before January 4, 1977.
- (h) A designation of unsuitability under this section does not prevent coal exploration of any designated area.
- (i) The commissioner shall adopt regulations to implement this section.

Article 04. General Provisions

Sec. 27.21.900. Mining by government agencies.

A federal, state, or municipal government agency, including a publicly owned utility or corporation, that proposes to engage in a surface coal mining operation that is subject to this chapter must comply with this chapter.

Sec. 27.21.910. Exemptions.

The provisions of this chapter do not apply to the extraction of coal

- (1) by a landowner or lessee for the landowner's or lessee's own noncommercial use from land owned or leased by it;
- (2) for commercial purposes if the surface coal mining operation affects two acres or less; or
- (3) as an incidental part of highway or other construction financed in whole or in part as specified by regulation, by federal, state, or municipal government agency.

Sec. 27.21.920. Experimental practices.

In order to encourage advances in mining and reclamation practices, and to allow post-mining land use for industrial, commercial, residential, recreational, or public purposes, the commissioner may, with the approval of the Secretary of the United States Department of the Interior, authorize departures in individual cases on an experimental basis from the environmental performance standards established under [AS 27.21.210](#). The commissioner may authorize these departures if

- (1) the experimental practices are, during and after the surface coal mining operation, potentially more protective of the environment than, or at least as protective of the environment as, those required by this chapter and regulations adopted under it;
- (2) the surface coal mining operation for which the departure is authorized is not larger than necessary to determine the effectiveness and economic feasibility of the experimental practices; and
- (3) the experimental practices do not reduce the protection afforded public health and safety below that provided by law or regulation.

Sec. 27.21.930. Water rights and replacement.

(a) Nothing in this chapter may be construed to affect the right of a person to protect the person's interest in water resources affected by a surface coal mining operation.

(b) An operator shall replace the water supply of an owner of an interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial, or other beneficial use from an underground or surface source, if the supply has been affected by contamination, diminution, or interruption proximately resulting from the operator's surface coal mining operation.

Sec. 27.21.940. Certification of blasters.

The commissioner shall adopt regulations requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or the use of explosives in surface coal mining operations.

Sec. 27.21.950. Civil actions.

(a) Except as provided in (b) of this section, a person who is or may be adversely affected by a failure to comply with this chapter may commence a civil action in the superior court on the person's own behalf and compel compliance with this chapter against

- (1) the commissioner, if the commissioner has failed to perform a nondiscretionary act or duty;
 - (2) an instrumentality or agency of the state that is in violation of this chapter or a regulation adopted, or an order or permit issued, under this chapter; or
 - (3) a person who is in violation of a regulation adopted or an order or permit issued under this chapter.
- (b) A person may not commence an action under (a)(1) of this section until 60 days after giving the commissioner written notice of the intended action in the manner prescribed by regulations adopted by the commissioner, except that an action may be brought immediately after the notice if the commissioner's failure to perform constitutes an imminent threat to the health or safety of the person or would immediately affect a legal interest of the person.
- (c) A person may not commence an action under (a)(2) or (a)(3) of this section
- (1) until 60 days after the plaintiff has given notice in writing of the violation to the commissioner and to the agency, instrumentality, or alleged violator;
 - (2) if the state is diligently prosecuting a civil action in a state or federal court to require compliance with the provisions of this chapter or a regulation adopted or an order or permit issued under this chapter; however, any person may intervene in that civil action as a matter of right.
- (d) A person may commence an action under this section only in the judicial district in which the surface coal mining operation is located.
- (e) Nothing in this section restricts any right that a person or class of persons may have under statute or common law to seek enforcement of any of the provisions of this chapter and the regulations adopted under it or to seek any other relief, including relief against the commissioner.
- (f) A person who is injured or whose property is damaged by the violation by a permittee of a regulation adopted or an order or permit issued under this chapter may bring an action for damages, including reasonable attorney fees and expert witness fees, only in the judicial district in which the permittee's operation is located. Nothing in this subsection affects the rights established by or limits imposed under [AS 23.30](#).
- (g) In an action under this section, the commissioner may intervene as a matter of right.

Sec. 27.21.960. Inconsistencies with federal act.

(a) A provision of this chapter that is inconsistent with the provisions of the Surface Mining Control and Reclamation Act of 1977 as determined by the Secretary of the United States Department of the Interior under 30 U.S.C. 1255(b) is invalid from the date of the secretary's determination.

(b) If a provision of the Surface Mining Control and Reclamation Act of 1977 or of the regulations promulgated under that Act by the Secretary of the United States Department of the Interior is deleted, amended, set aside, enjoined, or declared invalid by Congress, the secretary, or in a final, unappealable judgment of a court of competent jurisdiction, then the commissioner shall review the changes made and make an appropriate recommendation as to whether changes in this chapter or the regulations adopted under it should be made.

Sec. 27.21.970. Relationship to other laws.

(a) Nothing in this chapter abrogates or modifies the power of a state agency to enforce laws and regulations within its jurisdiction, except as specifically stated in this chapter and regulations adopted under it. The commissioner shall coordinate permitting procedures to prevent unnecessary duplication in permit review.

(b) Surface coal mining operations for coal that has been or is conveyed out of federal ownership must meet the requirements of this chapter.

Sec. 27.21.975. Severability.

If any provision of this chapter or the applicability of it to any person or circumstances is held invalid, the remainder of this chapter and the application of that provision to other persons or circumstances is not affected.

Sec. 27.21.980. Administrative Procedure Act.

Unless otherwise provided in [AS 44.37.011](#) or other law, [AS 44.62](#) (Administrative Procedure Act) applies to this chapter.

Sec. 27.21.998. Definitions.

In this chapter,

- (1) "**alluvial valley floors**" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas that are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits;
- (2) "**applicant**" means a person or other entity seeking a permit from the commissioner to conduct surface coal mining or underground mining activities under this chapter;
- (3) "**coal**" means all forms of coal, including lignite;
- (4) "**commissioner**" means the commissioner of natural resources or the commissioner's authorized representatives or agents;
- (5) "**department**" means the Department of Natural Resources;
- (6) "**imminent danger to the health or safety of the public**" means the existence of a condition or practice, or a violation of a permit or other requirement of this chapter, in a surface coal mining and reclamation operation under which a rational person would not submit to exposure for fear of substantial physical harm;
- (7) "**operation**" means a surface coal mining operation or a surface coal mining and reclamation operation;
- (8) "**operator**" means a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by coal mining within 12 consecutive calendar months in any one location;
- (9) "**other minerals**" means clay, stone, sand, gravel, metalliferous and non-metalliferous ores, and other solid materials or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal, and those minerals that occur naturally in liquid or gaseous form;
- (10) "**permit**" means a permit to conduct a surface coal mining and reclamation operation issued by the commissioner under the terms of this chapter;
- (11) "**permit area**" means the area of land indicated on the approved maps submitted by the operator with the application that must be covered by the operator's bond as required by [AS 27.21.160\(a\) - \(f\)](#) or by the individual performance and payment requirements for the operator who participates in the statewide bonding pool for mining operations as authorized by [AS 27.21.160\(g\)](#), and must be readily identifiable by appropriate markers on the site;
- (12) "**permittee**" means a person holding a permit to conduct a surface coal mining and reclamation operation or underground mining activities under this chapter;
- (13) "**person**" means an individual, partnership, association, society, joint-stock company, firm, company, corporation or other business organization;
- (14) "**reclamation plan**" means a plan for the reclamation of an applicant's proposed surface coal mining operation submitted by the applicant under regulations adopted under [AS 27.21.110](#);
- (15) "**significant imminent environmental harm to land, air, or water resources**" means a condition, practice, or violation that is causing or can be expected to cause an appreciable, reparable adverse impact to land, air, or water resources including, but not limited to, plant and animal life;
- (16) "**surface coal mining and reclamation operation**" means a surface coal mining operation and the activities necessary and incidental to the reclamation of that operation after August 3, 1977;
- (17) "**surface coal mining operations**" means
 - (A) an activity
 - (i) conducted on the surface of land in connection with a surface coal mine or, to the extent that the activity affects the surface of land, conducted in connection with an underground coal mine;

(ii) the products of which enter commerce or the operation of which directly or indirectly affects interstate commerce;

(iii) that may include contour, strip, auger, mountain top removal, boxcut, open pit, and area mining; the use of explosives and blasting; on-site distillation or retorting, leaching, or other chemical or physical processing of coal; and loading of coal for interstate commerce at or near the mine site;

(iv) other than an activity relating to the extraction of coal incidental to the extraction of other minerals under which the coal extracted does not exceed 16 2-/□3□ percent of the total tonnage of coal and other minerals removed annually for purposes of commercial use or sale and other than a coal exploration activity subject to this chapter; and

(B) the areas on which an activity described in (A) of this paragraph occurs or where the activity disturbs the natural land surface, including adjacent land, the use of which is incidental to the activity; and affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activity and for haulage; and excavation, workings, impoundments, dams, ventilation shafts, entry ways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are situated structures, facilities, or other property or materials on the surface resulting from or incidental to the activity;

(18) "**Surface Mining Control and Reclamation Act of 1977**" means P.L. 95-87, 91 Stat. 447-532, 30 U.S.C. secs. 1201-1328, as amended;

(19) "**unwarranted failure to comply**" means the failure of a permittee to prevent or abate a violation of a permit or of this chapter because of indifference, lack of diligence, or lack of reasonable care.

Sec. 27.21.999. Short title.

This chapter may be cited as the Alaska Surface Coal Mining Control and Reclamation Act.

Title 38. Public Land

Chapter 38.05 ALASKA LAND ACT

Sec. 38.05.150. Coal.

(a) The commissioner may, and upon the petition of a qualified applicant, shall divide coal land or the deposits of coal owned by the state into leasing tracts of 40 acres each, or multiples of 40 acres, and in the form which will permit the economical mining of the coal in the tract.

(b) Thereafter the commissioner may, upon the request of a qualified applicant or otherwise, from time to time, offer the land or deposits of coal for leasing. Each lease shall be awarded to a qualified applicant by competitive bidding or by the method prescribed by regulation.

(c) Where prospecting or exploration work is necessary to determine the existence or workability of coal deposits in an unclaimed and undeveloped area, the commissioner may issue to qualified applicants prospecting permits for a term of three years, covering not more than 5,120 acres with each permit. The commissioner shall grant a two-year extension of the initial three-year term of the permit if the permittee has conducted reasonably diligent prospecting or exploration activities in the area covered by the permit, has not been able to determine the existence and workability of coal deposits in the area, and wishes to continue prospecting or exploring in the area. The commissioner may grant up to three two-year extensions of the initial three-year term of the permit. At any time during the period of the permit, the permittee is entitled to a lease after submitting a mining plan satisfactory to the commissioner for that portion of the land in the permit as is shown to the satisfaction of the commissioner to contain coal in commercial quantities or to be needed for mining, reclamation, or processing the coal.

(d) For the privilege of mining or extracting the coal in the land covered by the lease, the lessee

(1) shall pay to the state the royalties specified in the lease; the royalties shall be fixed before offering the lease, and shall be effective for a period of not more than 20 years; the royalties shall be not less than five cents a ton of 2,000 pounds; the royalty payment is subject to the exploration incentive credit authorized by [AS 27.30](#);

(2) shall also pay an annual rental, payable at the date of the lease and annually thereafter, on the land or coal deposits covered by the lease, at a rate fixed by the commissioner before offering the lease; the annual rental shall be effective for a period of not more than 20 years; the annual rental shall be not less than 25 cents an acre for the first year of the lease, not less than 50 cents an acre for the second year, third year, fourth year and fifth year, and not less than \$1 an acre for each year thereafter during the continuance of the lease; the rental for each year shall be credited against the royalties as they accrue for that year; each lease shall provide that the annual rental payment is subject to adjustment at intervals of no more than 20 years and adjustments shall be based on the current rates for properties similarly situated.

(e) Each lease shall be for an indeterminate period upon condition of diligent development and continued operation of the mine, except when operation is interrupted by strikes, the elements, or casualties not attributed to the lessee.

(f) Notwithstanding [AS 38.05.132\(a\)](#), 38.05.180(ff), or 38.05.180(gg), a lease entered into under this section gives the lessee the right to vent or remove methane and other gas held in association with the coal in the land covered by the lease to ensure safe coal mining operations.

Section XII
Coal Leasing
Administrative Regulations

Title 11: Natural Resources
Chapter 85: COAL

Article 1
Competitive Leasing

11 AAC 85.005. Leasing procedures in general

Land designated as competitive for coal leasing purposes will be leased under the procedures provided in this chapter and in [11 AAC 82.400](#) - [11 AAC 82.475](#).

11 AAC 85.010. Competitive designation

(a) Except as provided in (b) of this section, state land will be designated as competitive for coal leasing purposes if the coal potential of the land for commercial development has been determined to be high or moderate by the division of geological and geophysical surveys after reviewing all available data. Land will be ranked as high potential if potentially commercial reserves are proven by drilling or field investigation. Land will be ranked as moderate potential if the probable existence of potentially commercial reserves is indicated by proximity to coal outcrops or drill holes.

(b) Land may not be designated as competitive for coal leasing purposes if the commissioner determines that there exists an irreconcilable conflict with surface use, and that coal development is not the highest and best use of the land.

11 AAC 85.015. Bidding terms

(a) The commissioner will choose an appropriate leasing method and bid variable, including but not limited to, cash bonus, royalty share, or net profit share. The written finding prepared under [AS 38.05.035\(e\)](#) must contain the rationale on which the leasing method decision was based.

(b) Notwithstanding [11 AAC 82.465](#), the commissioner will, in his discretion, defer up to 50 percent of any cash bonus payments, provided that notice of the deferred bonus payment and method of payment is published before the sale.

11 AAC 85.020. Right to reject bids

The commissioner will, in his discretion, reject any or all bids, and offer the lease to the next highest qualified bidder if the successful bidder fails to obtain the lease for any reason. The commissioner will not accept any bid that is less than the minimum bid established before the sale. The commissioner will notify any bidder whose bid has been rejected and include in the notice a statement of the reason for the rejection.

Article 2
Noncompetitive Leasing

11 AAC 85.100. Leasing procedures in general

Land designated as noncompetitive for coal leasing purposes will be leased under the procedures provided in this chapter and in [11 AAC 82.500](#) - [11 AAC 82.540](#).

11 AAC 85.105. Noncompetitive designation

(a) Except as provided in (b) of this section, state land may be designated as noncompetitive for coal leasing purposes if the commissioner determines that

(1) the land does not qualify for competitive leasing under [11 AAC 85.010](#); or

(2) the land was offered at a competitive sale and no acceptable bids were received.

(b) Land may not be designated as noncompetitive for coal leasing purposes if the commissioner determines that there exists an irreconcilable conflict with surface use, and that coal development is not the highest and best use of the land.

(c) Land opened for noncompetitive leasing before June 18, 1982 is closed for noncompetitive leasing until the land is reevaluated, and opened under [11 AAC 85.205](#).

(d) Land opened for noncompetitive leasing under (a) of this section is subject to a preferential right of first refusal by a lessee holding an overlying shallow natural gas lease issued under [AS 38.05.177](#).

11 AAC 85.106. Leasing of land within or underlying a shallow natural gas lease

(a) This section applies to land included within or underlying a shallow natural gas lease issued under [AS 38.05.177](#).

(b) If land within or underlying a gas lease is available under a first-come, first-served noncompetitive disposal under [11 AAC 83.100](#) for the purpose of issuing a coal lease, any coal lease applied for and offered for any land within or underlying the gas lease, without regard to depth from surface, will be offered first to the gas lessee. The commissioner will notify the gas lessee of record by certified mail at least 60 days before the issuance of a coal lease that includes land within or underlying a gas lease and will include with the notice a copy of the proposed coal lease and a statement of what the gas lessee must submit to the commissioner if the gas lessee wishes to obtain the proposed coal lease. Any other land included in a coal lease application that is not included within or does not underlie the gas lease will be considered to be applied for separately from the land within or underlying the gas lease and will not be subject to this section. The gas lessee will be awarded the coal lease for the land included within or underlying the gas lease upon receipt by the commissioner, within 30 days of the delivery by certified mail to the lessee of notice of the proposed coal lease disposal, of the following:

(1) a statement of qualifications required under [11 AAC 82.205](#);

(2) a statement of conformity to acreage limitations required under [11 AAC 85.210](#);

(3) the coal lease executed by the gas lessee;

(4) funds sufficient to pay any application fee and rentals required to be paid upon execution under the terms of the coal lease in the amount and form specified in the notice from the commissioner; and

(5) any other requirements listed by the commissioner in the notice.

(c) If land within or underlying a gas lease is to be offered by simultaneous filing and drawing in a noncompetitive disposal under [11 AAC 82.515](#) - [11 AAC 82.525](#) for the purpose of issuing a coal lease, the commissioner will provide notice of the disposal to the gas lessee by certified

mail postmarked at least 60 days prior to the first day of any simultaneous filing period. The gas lessee will be deemed to be the first priority applicant for land applied for that are within or underlying the gas lease upon receipt by the commissioner within the simultaneous filing period of an application from the gas lessee applying for a coal lease covering land within or underlying the gas lease and complying with the requirements of [11 AAC 82.500](#) - [11 AAC 82.540](#), [11 AAC 85.210](#), and any other requirements listed by the commissioner in the notice.

(d) If the gas lessee declines or fails to accept and be awarded a coal lease under (b) or (c) of this section, the commissioner will issue a coal lease for lands within or underlying the gas lease to, as the case may be, the qualified applicant who first applied for a coal lease in a first-come, first-served situation, or the next highest priority, qualified applicant in a simultaneous filing period situation.

(e) When a coal lease is issued, after the effective date of a gas lease, for land within or underlying a gas lease to a party other than the gas lessee, the coal may not be mined or extracted from the land within the gas lease until the coal lessee provides to the director a copy of the agreement between the coal lessee and the gas lessee required under [AS 38.05.177\(l\)](#).

(f) As used in this section,

(1) "coal lease" refers to a noncompetitive coal lease issued under [AS 38.05.150\(b\)](#) or to a coal prospecting permit issued under [AS 38.05.150\(c\)](#);

(2) "gas lease" refers to a shallow natural gas lease issued under [AS 38.05.177](#) any part of which is included in a proposed noncompetitive coal lease disposal; and

(3) "gas lessee" refers to the lessee of a shallow natural gas lease issued under [AS 38.05.177](#) any part of which is included in a proposed noncompetitive coal lease disposal.

11 AAC 85.110. Coal prospecting permits

(a) The commissioner will issue a coal prospecting permit only for land designated as noncompetitive. A coal prospecting permit application is subject to the preference for existing shallow natural gas leases under [11 AAC 85.106](#).

(b) A coal prospecting permit issued under this section is a disposal of an interest in land and is subject to the requirements of [AS 38.05.035\(e\)](#), [38.05.830](#), [38.05.945](#), and [38.05.946](#).

(c) A permit for noncompetitive land on which all or part of a permit or lease is expired, relinquished, or otherwise terminated will be issued under the noncompetitive drawing procedure described in [11 AAC 82.515](#) - [11 AAC 82.540](#).

(d) An application for a coal prospecting permit will be handled in an expeditious manner and a decision to deny an application or to initiate the disposal process will be issued within 65 days after the receipt of a completed application.

(e) The filing of an application for a coal prospecting permit does not vest a property right but merely creates a preference right to any permit that may be issued.

(f) Before beginning exploration, a coal prospecting permittee shall file a written notice of intent to explore or obtain an exploration permit, as appropriate, under [11 AAC 90.161](#) - [11 AAC 90.167](#) before beginning exploration. No separate prospecting plan of operations is required.

(g) No coal may be removed and marketed or used from lands under prospecting permit except for that amount necessary for sampling and testing.

(h) A copy of all data obtained from the land reflecting all pertinent tests, reports, surveys, and analyses conducted on or pertaining to the permit area must be submitted to the commissioner either upon application for conversion to lease under [11 AAC 85.120](#) or not more than 90 days after the expiration or termination of the permit. Data submitted under this section will be held confidential in accordance with [AS 38.05.035\(a\)\(9\)](#) or as otherwise required by law and will only be used for the administration of the functions, responsibilities and duties vested by law in the commissioner.

11 AAC 85.115. Permit extensions

(a) A permittee may apply for an extension of the term of a coal prospecting permit under [AS 38.05.150\(c\)](#). An application for extension must include

(1) an affidavit stating that the permittee spent an average of at least five dollars per acre per year during the permit period on work which increased the permittee's knowledge of the coal deposit within the area, in accordance with the terms of the permit;

(2) a description of prospecting activities showing, to the commissioner's satisfaction, that the permittee substantially complied with the notice of intent to explore or the exploration permit required under [11 AAC 85.110\(f\)](#) or a statement showing to the commissioner's satisfaction that compliance was delayed or interrupted by force majeure; and

(3) any additional information requested by the commissioner.

(b) Failure to provide the information or to make a showing as required by (a) of this section will result in denial of an application.

(c) An application for extension of a coal prospecting permit must be filed at least 30 days before the expiration of the permit.

(d) Within 21 days after receipt, the commissioner will review the application for completeness and notify the applicant of any deficiency. A decision will be issued within 65 days after receipt of a completed application. The filing of an application for an extension suspends the expiration of the original term of the permit until the application is either approved or denied.

(e) Repealed 9/28/86.

11 AAC 85.120. Permit conversion to lease

(a) At any time during the term of a coal prospecting permit, the permittee is entitled to a noncompetitive coal lease on that portion of the permit area shown to contain coal in commercial quantities or to be needed for mining, reclamation or processing operations of that coal, upon the submission of a satisfactory mining plan.

(b) A plan submitted under (a) of this section may be conceptual and must include

(1) reserve calculations for the coal beds which are classified as to the degree of accuracy using the terms "measured," "indicated," and "inferred" as defined in United States Geological Survey Circular 831 (1980);

(2) qualitative data supported by proximate analyses and calorific values of the coal beds on which the reserve calculations are based;

- (3) quantitative data describing coal bed thickness and continuity on which the reserve calculations are based;
- (4) topographic and geologic maps of the area of the permit, indicating the locations of sampling and drilling;
- (5) a description of the probable mining method;
- (6) evidence of commercial quantities of coal, including the estimated revenues from the sale of coal and the estimated costs of development of the mine and of extracting, removing, processing, transporting, and marketing the coal; the costs of development must include the estimated cost of exercising environmental protection measures, suitably reclaiming the land, and complying with all applicable federal, state, and local laws and regulations; and
- (7) any documentation or information that the commissioner requires, in addition to or instead of (1) - (6) of this subsection, to assist in understanding and evaluating the conversion of a prospecting permit to a lease.

(c) In this section, a "satisfactory mining plan" is a plan which shows commercial quantities of coal in an amount and quality determined by the commissioner to be sufficient under present and reasonably anticipated conditions to induce a prudent operator to pursue development.

(d) As required in [11 AAC 85.110\(h\)](#), an application for conversion to lease must include a copy of all data obtained from the permit land.

(e) Within 21 days after receipt, the commissioner will review the application for completeness and notify the applicant of any deficiency. A decision will be issued within 65 days after receipt of a completed application. The filing of an application for conversion to lease suspends the expiration of the term of the permit until the application is either approved or denied. A decision denying conversion to lease will be accompanied by a detailed description of the grounds or rationale on which the denial is based.

Article 3 **General Leasing Provisions**

11 AAC 85.200. Best interest determination

(a) Before holding a competitive lease sale or issuing a coal prospecting permit, the department will prepare a written finding under [AS 38.05.035\(e\)](#) which shows that the lease sale or permit issuance serves the best interests of the state.

(b) The written finding required by (a) of this section must be based upon the best available information and must consider

- (1) the coal potential of the land as determined by the division of geological and geophysical surveys;
- (2) applicable state and local land use plans and classifications;
- (3) comments from affected agencies and the public;
- (4) significant conflicts with surface use;
- (5) significant social and environmental effects of coal exploration, development, and production in the area;
- (6) significant impacts on potentially affected communities, including public services, and other public or commercial uses of the land;
- (7) economic effects of coal exploration and development, including revenue potential and administrative cost to the state; and

(8) measures which may be required to mitigate identified impacts.

(c) Land which is legislatively designated for recreation, conservation or other related purposes and where coal exploration and development is prohibited is not available for coal prospecting and leasing.

11 AAC 85.205. Reevaluation

(a) Land designated as competitive or noncompetitive for coal leasing purposes will, in the commissioner's discretion, be closed for 30 days, by order of the commissioner, for reevaluation of the designation of the land. A closing order will state its effective date and that the results of the reevaluation will be announced on the 31st day after that date.

(b) A decision not to reopen an area for noncompetitive leasing rejects any pending coal-prospecting permit application for that land. A rejected applicant will be notified of the reasons for rejection.

(c) Notwithstanding [11 AAC 82.110](#), a coal-prospecting permit will be issued on a first-come-first-served basis in accordance with [11 AAC 85.110](#) if an application was filed before the closing order and if the land is reopened to noncompetitive leasing.

11 AAC 85.210. Statement of conformity to acreage limitations

(a) An applicant for a prospecting permit or for a lease shall submit an affidavit which states that

- (1) the total acreage of coal-prospecting permits, coal leases, and applications for either, in which the applicant holds an interest, does not exceed the acreage limitations of [AS 38.05.140\(a\)](#); or
- (2) an application for additional acreage under [AS 38.05.140\(a\)](#) has been filed.

(b) If a lease or permit is issued which results in excessive acreage under [AS 38.05.140\(a\)](#), the lease or permit is void.

11 AAC 85.215. Lease terms

(a) In accordance with [AS 38.05.150](#), a lease is issued for an indeterminate period of time, subject to the conditions of diligent development and continued operation of the mine.

(b) The condition of diligent development is met if, upon review of the lease operations at least every 10 years, the commissioner finds that

- (1) the leased area is producing coal in commercial quantities;
- (2) the leased area is committed to a CMU as described in [11 AAC 85.270](#) and coal is being produced from the CMU in commercial quantities;
- (3) the lessee is proceeding in good faith to develop the leased area by complying with the approved plan of exploration and development in (c) of this section; or
- (4) the lessee has shown to the satisfaction of the commissioner that the development of a leased area in accordance with a plan of exploration and development under

(c) of this section is delayed or interrupted by force majeure. (c) Within one year after the issuance of a lease, the lessee shall submit to the commissioner a proposed plan of exploration and development which outlines a schedule, expenditures, and commitments for the exploration and development of the leased area. A

proposed plan must be consistent with the estimated size of reserves and must be designed to bring the leased area into production within a reasonable period of time.

(d) Within 65 days after receipt of a proposed plan of exploration and development, the commissioner will issue a written decision which accepts or rejects the proposed plan, based on whether execution of the plan would satisfy the requirement of (b)(3) of this section. If the commissioner rejects a proposed plan, he will include the reasons for the rejection in the written decision and will, in his discretion, also include modifications which would qualify the proposed plan for acceptance. An accepted plan remains in effect until production commences or until the commissioner accepts a revision of the plan.

(e) Whenever it appears that actual exploration or development will significantly deviate from an accepted plan of exploration and development, the lessee shall submit a proposed revision of the plan.

(f) Within 65 days after receipt of a proposed revision of a plan of exploration and development, the commissioner will accept or reject the revised plan. If the revised plan is rejected, the commissioner will state his reasons for the rejection and will, in his discretion, propose modifications which would qualify the revised plan for acceptance.

(g) If operations are interrupted for more than 30 days, the lessee shall notify the commissioner. The commissioner will determine whether the interruption constitutes failure to comply with the condition of continued operation as defined in (i)(2) of this section.

(h) The commissioner will, in his discretion, and upon petition by the lessee, authorize payment by the lessee of an advance royalty instead of continued operation for any particular year.

(i) As used in this section

(1) "commercial quantities" means a quantity of coal sufficient to yield a return in excess of operating costs, even if exploration and development costs may never be repaid and the undertaking, considered as a whole, may ultimately result in a loss;

(2) "continued operation" means production of coal in commercial quantities, except when the operations under the lease are interrupted by force majeure;

(3) "force majeure" means war, riots, strikes, acts of God, unusually severe weather or any other cause beyond the lessee's reasonable ability to foresee or control, including delays caused by administrative or judicial decisions or lack of them, whether similar to those enumerated or not.

11 AAC 85.220. Royalty

(a) The royalty rate must be set as follows, based on the adjusted gross value of coal from the leased area that is sold, disposed of, or consumed by the lessee:

(1) five percent for noncompetitive leases;

(2) no less than five percent for competitive leases where royalty is a bid variable;

(3) no less than five percent nor more than 12 percent for competitive leases where royalty is not a bid variable.

(b) For leases in existence on June 18, 1982, the royalty rate will be changed, at the next time of royalty adjustment, to five percent of the adjusted gross value.

(c) The lessee shall pay the royalty on or before the last day of the month following the month of production.

(d) For leases issued after June 18, 1982, the royalty rate is subject to adjustment by the commissioner not more frequently than every 10 years. The royalty adjustment must take into account the current royalty rates and other consideration being paid for coal of similar quality in the same general area or other relevant areas and all other relevant factors including changes in market conditions, transportation costs, the composition and special characteristics of the deposit, and the Btu content of the coal. A lease in existence on June 18, 1982, will be adjusted in accordance with the terms of the lease.

(e) In this section and in [11 AAC 85.225](#), "adjusted gross value" means gross value less any deductions authorized under [11 AAC 85.225](#).

11 AAC 85.225. Royalty value computation

(a) If the coal is sold in a bona fide arm's-length transaction between independent parties, adjusted gross value is the full consideration received by the lessee minus the following costs if those costs were borne by the lessee:

(1) reasonable beneficiation costs as defined in (e)(1) of this section; and

(2) reasonable transportation costs from the mine mouth to the point of sale, as defined in (e)(2) of this section. (b) Notwithstanding (a) of this section, the commissioner will determine the adjusted gross value of the coal, taking into account the consideration being paid for coal in the same general area or other relevant areas including areas outside Alaska, reasonable transportation costs, beneficiation costs, composition and special characteristics of the deposit, the Btu content of the coal, and other relevant factors, if the commissioner determines that the coal produced from the leased area is (1) sold or disposed of in other than a bona fide arm's-length transaction between independent parties; (2) sold or disposed of under a contract which sets a single price for coal without adjustments tied to market conditions;

(3) sold or disposed of under a contract which does not reflect the value of the coal at the time the coal is produced; or

(4) consumed by the lessee.

(c) The commissioner will, in his discretion, and upon petition by the lessee, convert the percent-of-value royalty rate to a comparable cents-per-ton rate in a written determination that it is in the best interest of the state to make the conversion and that the commissioner has adequate information to make an adjustment which is equitable to the state and the lessee. This cents-per-ton rate will be readjusted as necessary to reflect changes in adjusted gross value.

(d) The commissioner will allow deductions under (a) of this section when, in his judgment, the lessee provides him with an accurate account and description of the reasonable costs. When requested by the commissioner, the lessee shall promptly file with the commissioner all information that relates to royalty value computation. All royalty value computations are subject to audit by the commissioner.

(e) In this section

(1) "reasonable beneficiation costs" means the reasonable costs of any processing performed before sale that adds value to the coal as compared to its run-of-mine value; these deductible processing costs include the costs of grinding, washing, drying, grading, sorting, briquetting, any other means of beneficiation, and any reasonable transportation costs necessitated solely by

this beneficiation; primary crushing, loading, and storing costs are not included whether or not they are incurred on or away from the leased premises;

(2) "reasonable transportation costs" means actual costs of transportation occurring after the coal leaves the mine mouth, including the use of tankers, roads, conveyor belts, trucks, rail transportation and slurry pipelines; for any coal lease for which a coal royalty statement was timely filed for the month of July 1982, "reasonable transportation costs" also includes the actual costs of transportation from the point of extraction to the mine mouth; if the transportation facilities are owned by the lessee, then actual costs are limited to direct operating expenses and depreciation on capital equipment and do not include overhead or an internal rate of return on the capital investment; the commissioner will determine the reasonable transportation costs when any of the following conditions exist:

(A) the transportation contract is not an arm's-length transaction or is not representative of the market value of the transportation; or

(B) the method of transportation of coal is not reasonable in view of existing alternative methods of transportation;

(3) "mine mouth" means the tippie, railroad, or other loadout facility, where the coal is initially weighed or measured and loaded for transport to a buyer or user;

(4) "point of extraction" means that point where the coal first enters the lessee's coal transport system; and

(5) "point of sale" means the point of first transfer for value, if title also transfers, or the point of entry into a free market place.

11 AAC 85.230. Royalty in kind

(a) Royalty from a coal lease may be taken in kind under the provisions of [11 AAC 82.700](#) - [11 AAC 82.715](#), if the commissioner determines that taking in kind would be in the best interest of the state. The commissioner will consider the financial or legal hardships the taking may have on the lessee, including, but not limited to, the necessity for additional capital equipment, increased costs in production, and the inability to meet existing contractual obligations to customers.

(b) Notwithstanding [11 AAC 82.700](#), nine months' written notice will be given to each lessee of the election to take the royalty in kind.

(c) Notwithstanding [11 AAC 82.700](#), if the commissioner elects to take royalty in kind, the lessee shall deliver the royalty coal on the leased premises free of charge, into trucks or other carriers, slurry pipelines, or onto storage piles designated by the commissioner. The lessee is not required to provide free storage for longer than 30 days or pay slurry pipeline charges for any coal run onto storage piles or into slurry pipelines. The commissioner may elect to receive the royalty coal at point of sale or any other established unloading or transfer point between the lease and the point of sale, but the lessee will not be required to pay delivery and handling costs.

11 AAC 85.235. Lease rental

(a) The annual rental for all coal leases is \$3 per acre or fraction of an acre.

(b) For leases issued after June 18, 1982, the annual rental payment is subject to adjustment by the commissioner not more frequently than every 10 years. The adjustment will take into account the current rental rates for leases in the same or similar areas and all relevant factors affecting the development of a commercial operation. A lease in existence on June 18, 1982, will be adjusted in accordance with the terms of the lease.

(c) The rental payment for the first year of the lease is due on the date that the lease is granted, and the rental for each succeeding year must be paid on or before the beginning of each lease year.

(d) The rental for each lease or coal mining unit for each year will be credited against the royalties as they accrue for that year.

11 AAC 85.240. Rental and royalty relief

(a) An application under [AS 38.05.140](#) (d) for reduction of the lease royalty, or for a waiver, suspension, refund, or reduction of the rental, must be filed in accordance with [11 AAC 82.665](#).

(b) For the purposes of this section and [AS 38.05.140](#)(d), "royalty" includes net profit share payments.

11 AAC 85.245. Coal lease bond

(a) A coal lease bond is required before a lease is issued, and in no case may the amount be less than \$5 per acre or \$5,000, whichever is greater.

(b) A coal lease bond must be filed in accordance with [11 AAC 82.600](#).

(c) The commissioner will not consent to termination of liability under a coal lease bond unless an acceptable substitute bond has been filed or until all terms and conditions of the lease have been fulfilled.

11 AAC 85.250. Plan of operations

For any mining operation which is exempt from the provisions of the federal Surface Mining Control and Reclamation Act of 1977, the commissioner will require the lessee to submit a plan of operations consistent with the principles of that Act, for his approval before mining operations may begin.

11 AAC 85.255. Transfer of interest

(a) Before the commissioner approves an assignment, sublease or other transfer of an interest in a permit or lease, including assignments of working or royalty interest and operating agreements and subleases

(1) the account of any royalties, net profit share payments, and rentals due under the lease must be in good standing;

(2) the transferee shall submit a statement of qualifications under [11 AAC 82.205](#) and a statement of conformity to acreage limitations under [11 AAC 85.210](#); and

(3) the transferee shall submit an affidavit stating who is responsible for performing all obligations under the permit or lease.

(b) Before any approval under (a) of this section, the consent of the surety to the substitution of the transferee as principal, or a new bond with the transferee as principal, must be submitted in writing to the commissioner if the original lease required the maintenance of a bond. If the

transfer is for part of the leased land only, the consent of the surety to the transfer and its agreement to remain bound as to the interest retained by the lessee must be submitted, as well as a new bond with the transferee as principal covering the portion of the leased lands assigned or subleased.

(c) The assignor is liable for all obligations and liabilities accrued before the effective date of the assignment, and the assignee is liable for all obligations and liabilities accrued after the effective date of the assignment. In the case of a sublease or a transfer of an interest other than an assignment, the lessee or permittee continues to remain liable for all obligations under the lease or permit. The commissioner will take any legal action necessary to secure compliance with the terms and conditions of a lease or permit. Action may be taken against either the lessee or permittee or any of their successors or against both the lessee and permittee and their successors.

(d) The approval of an assignment of only a part of the lands in a lease creates a new lease bearing a new serial number and containing the same terms and conditions as the original lease.

11 AAC 85.260. Limitation on overriding royalties

(a) No overriding royalty, net profit interest or other right to payment out of production or revenues from a lease may be created which exceeds the rate of royalty first payable to the state under the lease unless the lessee shows to the satisfaction of the commissioner that the royalty is justified by substantial improvements made or to be made to the leasehold.

(b) The term "**payment out of production**" as used in this section is defined as a share of the coal produced from the lease, free of the costs of production.

11 AAC 85.265. Suspension and termination

If the lessee substantially breaches a significant provision of a permit or lease, or fails to comply with the applicable statutes and regulations, and the failure continues for 30 days after service of written notice by the commissioner, the commissioner will, in his discretion, suspend activity on the permit or lease until compliance is achieved, or terminate the permit or lease after additional notice and an opportunity to be heard.

11 AAC 85.270. Coal mining units

(a) For the purpose of achieving more economic operations or more efficient and orderly recovery of coal, leases may, with the approval of the commissioner, be united and the lessees may adopt a cooperative or unit plan of development and operation of their leases. As a condition of approval of a Coal Mining Unit or "CMU," the commissioner will, in his discretion and with the consent of the state lessees, establish, alter, change, or revoke the development, production, rental, or royalty requirements of the state leases within the unit area, as he determines necessary or proper to protect the public interest and to conserve natural resources. The commissioner will, in his discretion, require as a term of a competitive lease sale, that the leased area be united into a CMU.

(b) A unit consists of an area of coal land which can be developed and mined in an efficient, economic and orderly manner with due regard for the maximum recovery of coal and conservation of other resources. It may consist of one or more leases and may include intervening or adjacent

nonstate lands, but all land in the unit must be capable of being developed and operated as a unified operation. Approval of a CMU is subject to the conditions of diligent development and continued operation of the unit. Diligent development and continued operation anywhere within the CMU, with respect to either state or nonstate coal deposits, will be considered to have occurred on each state lease in the CMU.

(c) After a request by the lessees, a CMU containing any interest other than a single state lease becomes effective upon approval by the commissioner.

(d) The boundaries of a CMU may be changed upon application by the lessee and with the approval of the commissioner.

(e) If any coal lands in a CMU are relinquished, the lease terms for the unit will be adjusted accordingly.

(f) Interests in coal gained through the formation of a CMU shall not be counted as acreage under [11 AAC 85.210](#). **(g)** In this section, "CMU" means coal mining unit as described in (a) - (f) of this section.

11 AAC 85.275. Cooperative leasing

The commissioner will, in his discretion, enter into agreements with other owners of coal deposits for joint lease sales or to offer state leases on terms compatible with leases on lands owned by the other party that could be united with the state leases in a CMU as described in [11 AAC 85.270](#).

11 AAC 85.280. Surface Mining Control and Reclamation Act

All coal mining leases and operations must conform to the approved state program under the Surface Mining Control and Reclamation Act of 1977 or to the federal program if a state program is not approved.

11 AAC 85.285. Domestic use coal license

Repealed 9/28/86.

Section XIII: Abandoned Mines

Title 27. Mining

Chapter 27.21 ALASKA SURFACE COAL MINING CONTROL AND RECLAMATION ACT

Article 03. ABANDONED MINES

Sec. 27.21.270. Abandoned Mine Reclamation Fund.

The commissioner may take the actions necessary to ensure state participation to the fullest extent practicable in the Abandoned Mine Reclamation Fund created in 30 U.S.C. 1231 and to function as the state agency for that participation. In conformity with the Surface Mining Control and Reclamation Act of 1977, the commissioner shall

- (1) by regulation, establish priorities that meet the terms of the Surface Mining Control and Reclamation Act of 1977 for the expenditure of money received by the commissioner from the Abandoned Mine Reclamation Fund;
- (2) designate land and water eligible for reclamation or abatement with money received by the commissioner from the Abandoned Mine Reclamation Fund;
- (3) submit reclamation plans, annual projects, and applications to the appropriate authorities under the terms of the Surface Mining Control and Reclamation Act of 1977; and
- (4) administer money received by the state for abandoned mine reclamation or related purposes from the Abandoned Mine Reclamation Fund.

Sec. 27.21.280. Eligible land and water.

Land and water eligible for reclamation or drainage abatement expenditures under this chapter are those that were mined for coal or were affected by such mining, wastebanks, coal processing, or other coal mining processes, and abandoned or left in an inadequate reclamation status before August 3, 1977, and for which there is no continuing reclamation responsibility under state or federal law.

Sec. 27.21.290. Entry onto abandoned mine area.

(a) The commissioner may enter real property that has been adversely affected by past surface coal mining practices and other real property necessary for access to adversely affected real property to restore or reclaim the real property or to abate, control, or prevent the adverse effects. The money expended for and the benefits accruing to the real property from work performed under this subsection is chargeable against the real property and mitigates or offsets a claim in or an action brought by an owner of an interest in the real property for damages resulting from the entry. This subsection does not create new rights of action or eliminate existing immunities.

(b) The commissioner may enter real property for the purposes of conducting studies or exploratory work to determine the existence of adverse effects from past surface coal mining practices and to determine the feasibility of restoring or reclaiming the real property or abating, controlling, or preventing the adverse effects of past coal mining practices.

(c) The commissioner may enter real property under (a) or (b) of this section only after

- (1) giving notice of the entry by mailing it to the owners if they are known or, if not known, by posting notice on the premises and advertising once a week for four consecutive weeks in a newspaper of general circulation in the area in which the land is located;
- (2) making written findings that
 - (A) the land or water resources have been adversely affected by past coal mining practices;
 - (B) the adverse effects are at a stage that, in the public interest, action to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices should be taken; and
 - (C) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known or readily available or will not give permission for the entry.

Sec. 27.21.300. Acquisition of abandoned mine areas.

(a) The commissioner may, by purchase, donation, or condemnation in accordance with [AS 09.55.240](#) - 09.55.460, acquire real property that has been adversely affected by past surface coal mining practices if the commissioner determines that

- (1) acquisition of the real property is necessary to the successful reclamation of the real property and is in the public interest; and
- (2) the real property, after its restoration or reclamation or after the abatement, control, or prevention of the adverse effects, will serve recreational, historic, conservation, or reclamation purposes or will provide open space benefits; and
- (3) permanent facilities will be constructed on the real property for the restoration or reclamation of the real property or for the abatement, control, or prevention of the adverse effects; or
- (4) if the real property includes a coal refuse disposal site, the acquisition of the coal refuse disposal site and the coal refuse on the site will serve the purposes of this section; or
- (5) public ownership is desirable to meet emergency situations created by the adverse effects and to prevent recurrences of the adverse effects.

(b) Title to real property acquired under this section is in the state. If the commissioner acquires the real property by purchase or condemnation, the commissioner shall pay the fair market value of the real property as adversely affected by past coal mining practices.

(c) If real property acquired under this section is suitable for industrial, commercial, residential, or recreational development, the commissioner may sell the real property by competitive bidding, at not less than the fair market value of the real property. The commissioner shall adopt regulations relating to the sale of real property under this subsection that will ensure that the use of the real property is consistent with any state and local land use plans. If money received by the commissioner from the federal government is involved in the acquisition of the real property, the commissioner may sell the real property only if the sale is authorized by the Secretary of the United States Department of the Interior. If a person requests it, the commissioner shall hold a hearing in the area in which the real property is located to consider the use or disposition of the real property after its restoration or reclamation or after the abatement, control, or prevention of adverse effects. The commissioner shall hold the hearing at a time that will afford local residents and representatives of municipal government in the area the maximum opportunity to participate in the hearing. The commissioner shall publish notice of the hearing in a newspaper of general circulation in the area in which the real property is located at least 10 days before holding the hearing.

Sec. 27.21.310. Liens on abandoned mine areas.

(a) Within six months after the completion of a project under [AS 27.21.290](#) to restore or reclaim privately owned real property or to abate, control, or prevent the adverse effects of past surface coal mining practice on privately owned real property, the commissioner shall itemize the money spent on the project. If the project results or will result in a significant increase in the real property's fair market value, the commissioner may file a statement of the money spent in the recording office in the area in which the real property is located with a notarized appraisal by a licensed appraiser of the fair market value of the real property before the project began. The statement constitutes a lien on the real property as of the date of the expenditure which is second only to the lien of property taxes. The lien may not exceed the amount determined by either of two appraisals to be the increase in the fair market value of the real property as a result of the project. A lien may not be filed under this subsection against real property of a person who owned the surface before May 2, 1977, and who did not consent to, participate in, or exercise control over the surface coal mining operation that necessitated the project.

(b) A person affected by a lien under (a) of this section may petition the commissioner within 60 days after the recording of the lien for a hearing concerning the amount of the lien.

Sec. 27.21.320. Filling voids and sealing tunnels.

The commissioner may authorize the filling of voids, sealing open and abandoned tunnels, shafts, and entryways resulting from any previous mining operation and reclaim surface impacts of underground and surface mines to the extent authorized by the Secretary of the United States Department of the Interior.

Sec. 27.21.330. Emergency powers in abandoned mine areas.

(a) In emergency situations the commissioner may use money available to the state in the Abandoned Mine Reclamation Fund for the purposes of [AS 27.21.290\(a\)](#) if the commissioner finds that

(1) an emergency exists that constitutes a danger to the public health, safety, or general welfare; and

(2) no other person or agency will act expeditiously for those purposes.

(b) If the commissioner makes the findings described in (a) of this section, the commissioner may enter on real property under [AS 27.21.290\(a\)](#) or (b) without giving the notice or making the findings required by [AS 27.21.290\(c\)](#). An entry onto real property under this section may not be considered a condemnation of property or a trespass.

Sec. 27.21.340. Miscellaneous powers regarding abandoned mine lands.

(a) The commissioner may request the attorney general to initiate, in addition to any other remedies provided for in this chapter, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct the work described in [AS 27.21.270](#) - 27.21.340.

(b) The state has the power and authority to construct and operate plants for the control and treatment of water pollution resulting from mine drainage, including major interceptors and other appurtenant facilities, so long as that control and treatment complies with 33 U.S.C. 1251 - 1376 (the Federal Water Pollution Control Act).

Section XIV: Alaska State Constitution

Article 8

Natural Resources

Section 8.1 - Statement of Policy.

It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

Section 8.2 - General Authority.

The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

Section 8.3 - Common Use.

Wherever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use.

Section 8.4 - Sustained Yield.

Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

Section 8.5 - Facilities and Improvements.

The legislature may provide for facilities, improvements, and services to assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

Section 8.6 - State Public Domain.

Lands and interests therein, including submerged and tidal lands, possessed or acquired by the State, and not used or intended exclusively for governmental purposes, constitute the state public domain. The legislature shall provide for the selection of lands granted to the State by the United States, and for the administration of the state public domain.

Section 8.7 - Special Purpose Sites.

The legislature may provide for the acquisition of sites, objects, and areas of natural beauty or of historic, cultural, recreational, or scientific value. It may reserve them from the public domain and provide for their administration and preservation for the use, enjoyment, and welfare of the people.

Section 8.8 - Leases.

The legislature may provide for the leasing of, and the issuance of permits for exploration of, any part of the public domain or interest therein, subject to reasonable concurrent uses. Leases and permits shall provide, among other conditions, for payment by the party at fault for damage or injury arising from noncompliance with terms governing concurrent use, and for forfeiture in the event of breach of conditions.

Section 8.9 - Sales and Grants.

Subject to the provisions of this section, the legislature may provide for the sale or grant of state lands, or interests therein, and establish sales procedures. All sales or grants shall contain such reservations to the State of all resources as may be required by Congress or the State and shall provide for access to these resources. Reservation of access shall not unnecessarily impair the owners' use, prevent the control of trespass, or preclude compensation for damages.

Section 8.10 - Public Notice.

No disposals or leases of state lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

Section 8.11 - Mineral Rights.

Discovery and appropriation shall be the basis for establishing a right in those minerals reserved to the State which, upon the date of ratification of this constitution by the people of Alaska, were subject to location under the federal mining laws. Prior discovery, location, and filing, as prescribed by law, shall establish a prior right to these minerals and also a prior right to permits, leases, and transferable licenses for their extraction. Continuation of these rights shall depend upon the performance of annual labor, or the payment of fees, rents, or royalties, or upon other requirements as may be prescribed by law. Surface uses of land by a mineral claimant shall be limited to those necessary for the extraction or basic processing of the mineral deposits, or for both. Discovery and appropriation shall initiate a right, subject to further requirements of law, to patent of mineral lands if authorized by the State and not prohibited by Congress. The provisions of this section shall apply to all other minerals reserved to the State which by law are declared subject to appropriation.

Section 8.12 - Mineral Leases and Permits.

The legislature shall provide for the issuance, types and terms of leases for coal, oil, gas, oil shale, sodium, phosphate, potash, sulfur, pumice, and other minerals as may be prescribed by law. Leases and permits giving the exclusive right of exploration for these minerals for specific periods and areas, subject to reasonable concurrent exploration as to different classes of minerals, may be authorized by law. Like leases and permits giving the exclusive right of prospecting by geophysical, geochemical, and similar methods for all minerals may also be authorized by law.

Section 8.13 - Water Rights.

All surface and subsurface waters reserved to the people for common use, except mineral and medicinal waters, are subject to appropriation. Priority of appropriation shall give prior right. Except for public water supply, an appropriation of water shall be limited to stated purposes and subject to preferences among beneficial uses, concurrent or otherwise, as prescribed by law, and to the general reservation of fish and wildlife.

Section 8.14 - Access to Navigable Waters.

Free access to the navigable or public waters of the State, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

Section 8.15 - No Exclusive Right of Fishery.

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

Section 8.16 - Protection of Rights.

No person shall be involuntarily divested of his right to the use of waters, his interests in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.

Section 8.17 - Uniform Application.

Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

Section 8.18 - Private Ways of Necessity.

Proceedings in eminent domain may be undertaken for private ways of necessity to permit essential access for extraction or utilization of resources. Just compensation shall be made for property taken or for resultant damages to other property rights.

Section XV: Other Relevant Agency Permits, Statutes and Regulations

Agency and Statute / Regulation

Alaska Department of Fish and Game Permits, Statutes and Regulations List

Fishways and Hatcheries (Article 7) (AS 16.05.841 - .901)
Fish and Game Habitat (5 AAC 95)
Fish Habitat; Waters Important to Anadromous Fish (5 AAC 95.010 - .011)
Fish Habitat Permit for Small Scale Mining (Recreational Mining)
Permit Application is Included within APMA for Large-Scale Mining

Alaska Department of Environmental Conservation

Waste Management, Disposal and Discharge Authorization (AS 46.03)
Water Use Act (AS 46.15)
Administration of General Permits (18 AAC 83.210)
Exceptions to General Permit Requirement; Individual Permits (18 AAC 83.215)
General Permits (Article 3) (11 AAC 83.205 - .215)
Alaska Pollutant Discharge Elimination System (AS 44.46.025)
General Permit AKG375000 for Small Scale Mining (Recreational Mining)
Permit Application is Included within APMA for Large-Scale Mining

Federal Laws and Regulations

Clean Water Act of 1972; 33.U.S.C. §1251 et, seq.
Dredge and Fill Permit
Permit Application is Included within APMA for Large-Scale Mining