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**OFFICE OF THE LIEUTENANT GOVERNOR  
ALASKA**

**MEMORANDUM**

**TO:** John Crowther  
Department of Natural Resources

**FROM:** Scott Meriwether, Office of the Lieutenant Governor  
465.4081

**DATE:** July 13, 2017

**RE:** Filed Permanent Regulations: Department of Natural Resources

Department of Natural Resources Regulations re: 11 AAC 03, 83, and 89: Div. of Oil  
and Gas: Calculation of Net Profit Share (11 AAC 03, 83, and 89)

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Attorney General File:	JU2016200840
Regulation Filed:	7/11/2017
Effective Date:	8/10/2017
Print:	223, October 2017

cc with enclosures: Linda Miller, Department of Law  
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO REGULATIONS OF DEPARTMENT OF NATURAL  
RESOURCES


The attached 14 pages of regulations, dealing with net profit share leasing, administrative updates, and exploration incentive credits are adopted and certified to be a correct copy of the regulation changes that the Department of Natural Resources adopts under the authority of AS 38.05.020 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

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

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

Date: 5-04-2017

  
\_\_\_\_\_  
Andrew T. Mack  
Commissioner  
Alaska Department of Natural Resources

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on July 11, 2017, at 118p .m, I filed the attached regulations according to the provisions of AS 44.62.040 – 44.62.120.

  
\_\_\_\_\_  
Lieutenant Governor

Effective: August 10, 2017.

Register: 223, October 2017

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

~~Liquids~~

11 AAC 03.040 is amended to read:

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

12/12/80, Register 76; <sup>am</sup> 8 / 10 / 2017, Register 223)

((( Publisher: Throughout on history notes: No bold / no underline am and Register. )))

Authority: AS 38.05.020 AS 38.05.183

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

11 AAC 83.241(a) is amended to read:

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

<sup>of this Paragraph</sup>  
(1) the sum of either (A) or (B), depending on the month of production, and  
<sup>of this Paragraph</sup>  
(C)

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

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

(ii) 25 percent, for a month after June 2007 and before January 2014; or and before September 2017

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

(B) For a month after August 2017, 35 percent multiplied by the amount of this subparagraph resulting from subtracting (ii) from (i):

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

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

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

(A) the percentage rate that would be applicable under AS 43.55.011(f)(1) of (f)(2)

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

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

11 AAC 83.241(b) is amended to read:

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

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

OF this paragraph. For a month

(1) for a month before September 2017, the product of (A) and (B) After  
a ((lowercase))

August 2017, the minimum of the production tax before credits under (a) of this  
section and the amount resulting from the product of (A) and (C). OF this paragraph

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

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



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

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

(2) for a month after December 2013 and before January 2017, the amount  
the calculations under of this paragraph  
 resulting from subparagraph (A). For a month after December 2016 and before  
the calculations under of this paragraph. For a month  
September 2017, the amount resulting from subparagraph (B). After August 2017, the  
the calculations under a ((lowercase))  
minimum of the amounts resulting from subparagraphs (C) and (D). of this paragraph

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

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

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

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

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

*the amounts calculated under* (A) and (C). *of this paragraph. For a month* *that* *as to that oil and gas* *of this paragraph* *the amounts calculated under*

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

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

attributable to oil other than state royalty oil, divided by the number of barrels of oil, other than state royalty oil, produced from the NPSL"; and

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

A minus B minus C, where

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

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

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

11 AAC 83.241(c) is amended to read:

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

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

43.55.160(f) less the following amounts:

(1) the lessee's direct operating costs during the month under 11 AAC 83.240, excluding the production tax lease allowance under (a) of this section and abandonment costs



allowed under 11 AAC 83.240(e); however, if the NPSL is within a unit subject to AS

43.55.165(j), for purposes of the calculation under this paragraph the lessee's direct operating costs during the month are replaced by one-ninth of the lessee's direct operating costs during the period April 1, 2006, through December 31, 2006, multiplied by the following factor:

- (A) 1.03 for a month in 2007;
- (B) 1.061 for a month in 2008;
- (C) 1.093 for a month in 2009; and

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

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

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

(f) For the purposes of

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

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

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

~~then the net credit augmentation rate is equal to 1 for that month~~ otherwise, the net credit augmentation rate is equal to 1 for that month (or lower case))

net credit augmentation rate is calculated according to the following formula:

$NCAR = 1 / (1 - (.35 * NPR))$ , where

“NCAR” equals the net credit augmentation rate; and

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

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

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

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

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

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

$/ (1 - (.35 * NPR))$ .

(Eff. 2/13/2010, Register 193; am 1/9/2014, Register 209; am 8/10/2017, Register

223)

Authority:

AS 38.05.020

AS 38.05.180

11 AAC 83.245(g) is amended to read:

11 AAC 83.245. Reporting and payment requirements.

(g) Not later than May 14, 2010, each lessee shall file amended NPSL reports under this section covering each month after <sup>March</sup> 2006 for which an item described in (b)(1) – (5) of this section

is affected by the retroactive application of a provision listed in 11 AAC 83.290, as that section  
read on August 10, , 2017.

(Eff. 11/9/79, Register 72; am 8/15/82, Register 83; am 2/13/2010, Register 193; am  
1/9/2014, Register 209; am 8 / 10 / 2017 , Register 223 )

Authority: AS 38.05.020 AS 38.05.180

~~Editor's note: Forms and instructions for making NPSL payments, and filling NPSL~~  
reports and supporting documentation required to comply with 11 AAC 83, can be obtained at the  
Anchorage office of the Department of Natural Resources, Division of Oil and Gas, 550 West 7<sup>th</sup>  
Avenue, Suite 1100, or can be found on the department's website at *(Cf Publisher: No change to*  
*editor's note.)*  
~~[www.dog.dnr.alaska.gov/Royalty/ReportingInstructions.htm](http://www.dog.dnr.alaska.gov/Royalty/ReportingInstructions.htm).~~

~~Authority: AS 38.05.020 AS 38.05.180~~

11 AAC 83.250(a) is amended to read:

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

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

(2) be mailed, electronically mailed, or personally delivered to: Office of the  
Commissioner, Alaska Department of Natural Resources, 550 W. 7<sup>th</sup> Avenue, Suite 1400,

Anchorage, AK 99501, or DNRappeals@alaska.gov [P.O. BOX M, JUNEAU, ALASKA 99811].

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

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

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

(Eff. 11/9/79, Register 72; am 2/13/2010, Register 193; am 8 / 10 / 2017, Register 223)

223)

Authority: AS 38.05.020 AS 38.05.180

11 AAC 83.255(b) is amended to read:

~~11 AAC 83.255. Formal hearings.~~

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

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



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

(3) state the grounds for the lessee's protest, including the facts (if any) remaining at issue, the legal authority (statutes, regulations, or case law) and any generally accepted accounting principles that support the lessee's protest. ← (cc no bold))

(Eff. 11/9/79, Register 72; am 8 / 10 / 2017, Register 223)

Authority: AS 38.05.020 AS 38.05.180

11 AAC 83.290 is amended to read:

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

(1) 11 AAC 83.209(b)

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

(3) 11 AAC 83.220;

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

(5) 11 AAC 83.241 (a)-(e), except as amended effective August 10, 2017;

**(b) The provisions of 11 AAC 83.241(b)(2)(B) and 11 AAC 83.241(c), as amended effective , 2017, apply retroactively to January 1, 2017.** ← (cc no bold))

(Eff. 2/13/2010, Register 193; am 1/9/2014, Register 209; am 8 / 10 / 2017, Register 223)

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

4 SSLA 2016

~~Title 11, Alaska Administrative Code, Chapter 89, Exploration Incentive Credit.~~ 2

11 AAC 89.010 is repealed:

11 AAC 89.010. Applicability; purpose. Repealed. (Eff. 9/22/95, Register 135;  
repealed 8 / 10 / 2017, Register 223) *← (CC Publisher: Throughout no bold, no ul under repealed and Register))*

Authority: ~~See 33, ch. 4, AS 41.09.010 AS 41.09.020~~  
4 SSLA 2016 2

11 AAC 89.015 is repealed:

11 AAC 89.015. Eligible project. Repealed. (Eff. 9/22/95, Register 135; repealed  
8 / 10 / 2017, Register 223)

Authority: ~~See 33, ch. 4, AS 41.09.010 AS 41.09.020~~  
4 SSLA 2016 e

11 AAC 89.017 is repealed:

11 AAC 89.017. Application. Repealed. (Eff. 9/22/95, Register 135; repealed  
8 / 10 / 2017, Register 223)

Authority: ~~See 33, ch. 4, AS 41.09.010 AS 41.09.020~~  
4 SSLA 2016 e

11 AAC 89.020 is repealed:

11 AAC 89.020. Grant of maximum credit. Repealed. (Eff. 9/22/95, Register 135;  
repealed 8 / 10 / 2017, Register 223)

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

11 AAC 89.030 is repealed:

**11 AAC 89.030. Inspection; report.** Repealed. (Eff. 9/22/95, Register 135; ~~repealed~~  
8 / 10 / 2017, Register 223 )

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

11 AAC 89.040 is repealed:

**11 AAC 89.040. Extension and adjustment of maximum credit.** Repealed. (Eff.  
9/22/95, Register 135; ~~repealed~~ 8 / 10 / 2017, Register 223 )

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

11 AAC 89.050 is repealed:

**11 AAC 89.050. Allocation; assignment.** Repealed. (Eff. 9/22/95, Register 135;  
~~repealed~~ 8 / 10 / 2017, Register 223 )

Authority: AS 41.09.010 AS 41.09.020

11 AAC 89.060 is repealed:

**11 AAC 89.060. Audit.** Repealed. (Eff. 9/22/95, Register 135; ~~repealed~~ 8 / 10 / 2017,  
Register 223 )

Authority: ~~Sec 33, ch. 4,~~ AS 38.05.035 AS 41.09.020  
~~4 SSLA 2016~~

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AS 41.09.010

AS 41.09.090

11 AAC 89.090 is repealed:

**11 AAC 89.090. Supplementation and correction of data.** Repealed. (Eff. 9/22/95,  
Register 135; ~~repealed~~ 8 / 10 / 2017, Register 223)

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

11 AAC 89.990 is repealed:

**11 AAC 89.990. Definitions.** Repealed. (Eff. 9/22/95, Register 135; ~~repealed~~  
8 / 10 / 2017, Register 223)

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