

## **Questions and Answers Regarding DNR's May 3, 2018**

### **Proposed Mining Rights Regulation Revisions**

#### **11 AAC 86**

**DNR encourages the public to submit written questions regarding the proposed regulations or the regulation adoption process. Please submit your questions by May 25 to ensure that DNR has adequate time to provide an answer. DNR will accept questions up until the end of the comment period and will endeavor to post the questions and answers before the close of the comment period at 5:00 p.m. June 4<sup>th</sup>, 2018.**

**As of May 30, 2018**

**QUESTION 1:** Why did DNR propose revising these particular regulations?

**ANSWER:** Many in the mining community pointed out potential modifications to the current mining rights regulations to meet the goals of clarity, ease of administration, and overall better implementation of the mining statutes regarding mining rights.

In 2016 and late 2017 DNR oversaw public scoping efforts to identify and address issues in its mining regulations in 11 AAC 86, Mining rights. Through these efforts, DNR gathered comments and ideas for possible regulation changes that would be beneficial to the state and mining right holders.

In 2018, the Governor also introduced legislation that proposed changing state law to eliminate the requirement for annual labor, increase annual rent and make other revisions to implement removal of the requirement to record annual statements of labor (SB 166 and HB 317). As noted in a March 2, 2018 letter from DNR to Senator Giessel, the purpose of the bill was to solve the problem of "unintentional abandonments" that result from statements of annual labor that fail to accurately set out the essential facts.

While the legislature has recently adjourned without passage of the bills, DNR obtained further information and comments regarding mining issues and problems in Alaska as a result of the public scoping and legislative process. For example, DNR determined that there was little support for changing the mining year to begin and end on midnight August 31 annually, and that miners wanted the ability to satisfy annual labor requirements through a combination of labor, cash in lieu and labor carry forward credits if they chose.

On May 3, the department put forth a package of proposed regulation changes that would target key regulatory issues identified as creating potential challenges to miners' maintenance of their ownership, or tenure, of their mining claims, and to minimize as

permitted under the existing statutory framework, abandonments for often unintentional errors or omissions on mining statements of annual labor. As noted in the “Dear Alaskan” letter that accompanied proposed regulations public notice, the department recognizes the State would benefit from review and potential revision of other mining regulations, and DNR will certainly be looking at additional opportunities to do so in the near future.

**QUESTION 2:** Why did DNR propose revising these regulations at this time and with only 32 days for public comment?

**ANSWER:** The state’s mining labor year runs from September 1st to September 1<sup>st</sup> of the following year. Statements of annual Labor are required to be recorded in the recording district in which the claim is located. These typically are recorded between September 1<sup>st</sup> and the legal deadline for recordation which is November 30th annually.

For Alaskan miners to benefit in the 2017-2018 mining year from any changes to the mining rights regulations, it would be best to have the regulation revisions in effect before September 1<sup>st</sup> of 2018.

There are only four months left in the 2017-2018 mining labor year. Therefore, in order to potentially implement any final regulation changes by September 1<sup>st</sup>, the department initiated the public review process when it did, with a public comment period of 32 days.

**QUESTION 3:** When will these proposed regulations go into effect? Will they be in effect for the 2017-2018 mining year or the 2018-2019 mining year?

**ANSWER:** After the public comment period ends, DNR will either adopt these provisions (in whole or in part) or other provisions of the regulations dealing with the same subject, without further notice; or DNR will decide to take no action on the proposed regulations. The language of any final regulations may be different from that of the proposed regulations.

If DNR decides to adopt these regulations, or similar regulations dealing with the same subject, DNR is hoping that the regulations will be in effect by September 1<sup>st</sup>, 2018. DNR anticipates that the majority of statements of annual labor for the 2017-2018 labor year will be recorded after this date.

This means that a statement of annual labor recorded on or before August 31, 2018 would be recorded while the existing regulations were in place. For example, if a miner records a statement of annual labor on August 2, 2018, the miner would be required to provide the essential facts as current regulations require. If new regulations go into effect with language similar to the proposed language noticed May 3, 2018, then a statement of annual labor recorded on or after September 1<sup>st</sup>, 2018 would require a smaller subset of the essential facts currently required by regulation. Therefore, if

regulations are finalized with language similar to the proposed language noticed May 3, then any previously recorded statements of labor that met the current regulatory requirements would likely also meet the requirements of any new regulations. It would still be the case that any failure to accurately set out any essential facts on the new, smaller list of essential facts would still result in the statement of labor being void. However, as there are less essential facts required in the proposed regulations, then presumably there should be less opportunity for failure to accurately set out all the facts. Any mining right holders have until November 30<sup>th</sup>, 2018 to record a valid statement of annual labor, and any statement recorded between September 1<sup>st</sup>, 2017 and August 31, 2018 may be replaced with another statement of annual labor recorded on or after September 1<sup>st</sup>, 2018.

As drafted, the proposed regulations have reduced the number of requirements on a statement of annual labor. Therefore, a statement of labor recorded pursuant to existing regulations would also meet the requirements of the proposed regulations, if after receipt of public comment it is determined that reduced requirements are an acceptable course of action for changes in the regulations.

QUESTION 4: Why did DNR propose revising 11 AAC 86.215(a)(7), Dealing with Certificate of location and first rent payment?

ANSWER: This proposed revision seeks to simplify the mapping requirements for new mining claim locations in two ways. First, for locations using the MTRSC system, (which is the Meridian, Township, Range, Section Claim System established under AS 38.05.195) locators would no longer have to map the boundaries of a new mining claim. DNR understands that maps are not as necessary for an MTRSC location as a traditional location, as one can graphically recreate MTRSC locations, along the section lines, based on an adequate legal description. For traditional claims though, also known as non-MTRSC claims, a map is still required, because the legal descriptions are typically much more complex. Feedback on this topic is welcomed.

Second, the proposed regulation revises the language such that the level of detail provided by non-MTRSC locators for the “dominant physical features of the land” is limited to being to the best of the locator’s knowledge. This proposed change is because the “dominant physical features of the land” may vary greatly and has been perceived as a subjective requirement.

If this provision is implemented, the department would expect a reduction in challenges to adequacy of claim sketches and challenges claim holders may face from competitors based on alleged inadequacies in sketches.

QUESTION 5: Why did DNR propose revising 11 AAC 86.215(b), Dealing with Certificate of location and first rent payment?

ANSWER: This proposed revision seeks to clarify that “file for record” means “record.” The proposed revision also includes a statutory reference that was omitted in the past. This revision clarifies the authority under which abandonment would occur.

QUESTION 6: Why did DNR propose adding a new regulation 11 AAC 86.216, Dealing with Overlapping or Conflicting locations?

ANSWER: This proposed regulation attempts to provide more clarity in the future for mining claim locators in the event of situations of overlapping and conflicting mining locations. It also is intended to provide clarity for locators regarding department obligations to inform locators of overlapping locations and regarding authorizations for operations on a claim that overlaps another claim. It also provides clarity regarding the effect of state mineral closures and leasing restrictions on locations.

QUESTION 7: Why did DNR propose revisions to 11 AAC 86.220, Dealing with Annual labor?

ANSWER: DNR has recognized that the existing regulations dealing with information, or “Essential Facts”, required to be included in a statement of annual labor have been problematic for some mining rights holders. Errors, omissions or inaccuracies in setting out these essential facts can trigger abandonment of mining rights. This is because state law under AS 38.05.256(a) states in relevant part: “A statement of annual labor that does not accurately set out the essential facts is void and of no effect.” Upon review of its regulations, DNR identified that much of the information currently being required under 11 AAC 86.220(c)(1)-(5) is information that DNR already has in its records. However, this information is needed by the state’s recorders’ office to record the statement of annual labor. Therefore, DNR has proposed to repeal and readopt this subsection of regulation to separate the purpose and effect of these two types of information. DNR welcomes comments on this proposal and any potential effects. “Essential Facts” under the proposed regulation are proposed to be limited to:

- (1) the name or the state-assigned file number (ADL) for the mining claim, leasehold location or lease;
- (2) the name of at least one owner; and
- (3) description of
  - (A) any labor performed or improvements made during the mining labor year,
  - (B) the amount of any cash payment made instead of annual labor,
  - (C) the monetary value of any past improvements being applied for the current labor year; or
  - (D) any combination of (A), (B) and (C).

Additional information needed to record a statement of annual labor still would be required to be included on the statement, but failure to put that information on a statement under the proposed regulations would not result in an abandonment of the mining right under AS 38.05.265, because it would no longer be an “Essential Fact.”

Such information or requirements include:

- The combination of both the name and address of at least one owner,
- The combination both the name and the state assigned file number for the mining right, (at least one or the other of these (but not both) is required to meet essential fact requirements as well),
- The name and address of the person recording the statement of annual labor,
- The monetary value of annual labor or improvements to be applied for the future labor years.

Under the proposed regulations, a statement of labor must be recorded in the recording district in which the location is situated. Further, the regulation clarifies that a statement must meet the recording requirements of AS 40.17.040, and be recorded on a form approved by the department or on a substantially similar document. Reducing the number of “Essential Facts,” could reduce and prevent unintended mining right abandonments.

In other words, under this proposed regulation revision, the system would work this way:

DNR’s version of the Statement of annual labor regulations would require all the information listed in the proposed regulation, both essential information, and non-essential information including a legal description of the mining right.

Failure to accurately provide the name or the ADL number; to list the name of at least one owner; or to accurately describe the labor performed or improvements made during the mining labor year, the amount of any cash payment made instead of annual labor, or the monetary value of any past improvements being applied for the current labor year (collectively, the essential information) would still result in the annual labor statement being void and of no effect under the language of AS 38.05.265.

Failure to include any other information required in the proposed regulation that is not an essential fact would not result in voiding of the affidavit and abandonment of the claim under AS 38.04.265.

Additionally, DNR proposes to amend 11 AAC 86.220(d). This change would replace the phrase “an affidavit” with the phrase “a statement of annual labor.” This was proposed to make the regulation read consistently with the term as used in state law. Currently, both terms are used interchangeably.

DNR proposed to amend 11 AAC 86.220(g). This change again would replace the phrase “an affidavit” with the phrase “a statement of annual labor.” This change was also proposed to clarify when a statement of annual labor could and could not be amended as prescribed under state law.

Further, DNR also proposes under these proposed regulations to amend 11 AAC 86.220(h). This change would incorporate the decision and holdings of the Alaska Supreme Court in *Chalovich v. State, Dept. of Natural Resources*, 104 P.3d 125 (Alaska 2004). In this case the court ruled that “a miner who mails payment on or before September 1, and who can verify the date of such mailing through a postmark, has performed annual labor by the end of the mining year.” (See page 134 of decision).

The proposed regulations contain an end date of 90 days to provide ultimate closure on whether a miner had paid in lieu of performing annual labor. DNR assumes that 90 days is a sufficient window of time to expect delayed mail in rural Alaska to reach the department, but the department welcomes comments on what the public proposes is a reasonable window of time. This proposed regulation was also revised to replace the phrase “in lieu” with the phrase “instead”, to make the regulation read more consistently with the term as used in state statute.

DNR also proposes to add a new regulation 11 AAC 86.220(i). The department has been notified by miners that carry-forward labor can be confusing. At the same time, the department is not interested in discouraging a miner to do more on their claim than required in a single labor period. As a result, the department proposed this change with the intent of providing clear guidance on how excess annual labor may be applied to the next four years of annual labor requirements. This proposed regulation would also make it clear that if excess labor is to be applied to a future year’s annual labor requirements, the amount of the excess labor must be set out in the statement of annual labor under 11 AAC 86.220(c), such that it can be determined whether there is any excess labor carried forward from past years.

DNR also proposed to add a new regulation 11 AAC 86.220(j). This proposed change states that a mining right holder may satisfy the requirement for annual labor through a combination of actual labor, a cash payment instead of annual labor, or excess annual labor carried forward from previous years. The purpose of this is to allow a combination of whatever resources the miner applies to their claim and is intended to provide the greatest flexibility for a miner to satisfy labor requirements.

DNR also proposed to add a new regulation 11 AAC 86.220(k). This proposed new regulation would address what happens under the proposed regulations when a mining right holder indicates on their statement of annual labor a period of labor that exceeds the mining year for which they are recording the statement.

Further, it is not uncommon for a miner to include labor on a statement for labor performed during a time period after the close of the labor year for which the statement is being recorded. This proposed change sets out that if a mining right holder who otherwise properly records a statement of annual labor, to include setting out the essential facts, but cites labor that includes labor beyond the end of the labor year, the miner would be allowed an opportunity to clarify which portion of the labor performed was performed during the labor year being reported. For example; a mining right holder reports that they completed \$150 worth of annual labor on their 40-acre claim, but did so between June 1<sup>st</sup> and October 1<sup>st</sup>. The example performance period spans two

separate labor years and it is unclear whether sufficient labor (\$100) was performed on the claim between June 1<sup>st</sup> and the end of the labor year on September 1<sup>st</sup>, or how much work was done between September 1<sup>st</sup> and October 1<sup>st</sup>.

This proposed regulation would afford the mining right holder with notification of the need for clarification and allow the mining right holder 90 days from notice by the department to clarify whether the statement reports sufficient labor for the labor year at issue. The proposed regulation also provides that if the mining right holder fails to clarify the statement within the 90 days, the statement would be deemed void.

**QUESTION 8:** Why did DNR propose adding a new regulation 11 AAC 86.224, Dealing with Penalty and eligibility to cure abandonment?

**ANSWER:** The proposed regulations provide an outline of implementation of the cure provision of AS 38.05.265(b). It would provide that only new valid locations established during the abandonment period, or a mineral closing order issued by the state can prevent an abandoned claim from being reinstated under the cure provision. In addition, subsection (b) was proposed to clarify that a penalty payment is equal to one year's rent at the regular rental rate, not including any credit or reductions or any other rental amount. DNR anticipates that these regulations will assist state mining right holders to better understand when and how to exercise their right to cure an abandonment of a mining right.

**QUESTION 9:** Why did DNR propose revising 11 AAC 86.541(e), Dealing with offshore mining lease rental?

**ANSWER:** DNR has proposed this regulation to reflect that the automatic abandonment requirement for offshore mining leases was removed from state statute in 1997. This proposed change updates current regulations to remove automatic abandonment of offshore mining leases per the requirements of AS 38.05.265.

**QUESTION 10:** Why did DNR propose adding a new regulation 11 AAC 86.590, Dealing with Definitions?

**ANSWER:** DNR has come to recognize that certain terms used, or may be used, in state mining statute or the regulations are unclear to the public or may be clear to the public but not defined in statute or regulation. Accordingly, DNR is proposing to create a definitions section in 11 AAC 86, and define three critical terms to help ensure everyone is operating with the same understanding of word meanings.

The first term is "ADL Number". While some members of the public may know what this term means, DNR has dealt with individuals that were unaware what this stood for or thought it meant "Alaska Driver's License" number. The definition clarifies that for DNR in the mining context "ADL Number" means a state-assigned Alaska Division of Lands

number. This is the unique file number assigned by DNR to each mining claim, leasehold location, lease or prospecting permit for record keeping purposes.

The second term is “State-selected Lands”. In the context of certain laws and regulations, this term could be interpreted to mean several different types of state land interests, including state patented land, state selected land that has been tentatively approved for patent, state selected lands, or state top-filed lands (lands selected by others that the state has a second-in-line type interest). DNR sought to ensure that with regard to Chapter 11 AAC 86, the terms used have the same meaning as the terms defined in AS 38.05.275(b).

The third term is “a properly recorded”. This term is used in both state mining law and department regulations, and it is the departments experience that this term has created the most confusion or uncertainty for members of the public. DNR is attempting to define this term in a way that makes clear what constitutes a “properly recorded” document.

DNR has identified three critical elements for the definition of “properly recorded” document:

First, that is timely recorded under any applicable requirements of AS 38.05.195(c), AS 38.05.210 and 11 AAC 86.220;

Second, that it is recorded in the appropriate recording district in which the mining location is located, and

Lastly, that it meets the standards of the Recorder’s Office under 11 AAC 06.040.

DNR believes that this definition would clarify any misunderstandings regarding this term.

Ultimately, this new section of regulations could also provide a place that additional definitions of terms identified in the future and related to mining rights could be located.

**QUESTION 11:** What does the Department think these proposed regulations will change for the better?

**ANSWER:** As stated in the Dear Alaskan letter, the revisions included in this package are specifically targeted at minimizing the unintended adverse impacts for mining right holders largely due to annual labor reporting requirements.

This question is answered in answers to questions 1 -10 above that address the purposes and intended benefits from the individual regulation proposals. Primarily, DNR believes that limiting the number of “essential facts” required by regulation, in the proposed revisions to 11 AAC 86.220, would significantly reduce the number of abandonments under AS 38.05.265 for errors in setting out essential facts in an affidavit of annual labor. Second, these proposed regulations are designed to minimize abandonments resulting from confusion or technical errors in statements of annual

labor and to give the department additional administrative flexibility to better manage the increasing number of mining rights on state owned-lands. The intent is to reduce unintended adverse impacts for mining right holders while minimizing management impacts to the department. Third, the proposed regulations set out requirements and limitations for curing abandonments with the goal of providing clear guidance for mining rights holders.

QUESTION 12: Are there significant issues that the Department can identify that these regulations fix, such that these regulations are needed for a short term, interim fix in anticipation of statutory changes in the immediate future?

ANSWER: The answers provided to questions 1 -10 above address the issues, purposes and intended benefits from the individual regulation proposals in more detail. As stated in the answers to previous question, DNR believes the issues of abandonment of mining rights due to errors in statements of annual labor, claim overs taking by others, and clarifying the abandonment cure process are key issues DNR is trying to address. Other issues include simplifying claim location requirements, revising its regulations in conformance with *Chalovich v. State, Dept. of Natural Resources*, 104 P.3d 125 (Alaska 2004), clarifying how AS 38.05.265 affects mining leases, and providing needed term definitions. These proposed regulations revisions address regulatory issues under the existing statutory framework for obtaining and maintaining mining rights on state owned land. Any potential future legislation is beyond the scope of the proposed regulations. As with any statutory change, if the Alaska Legislature revises state mining law in the future, DNR may revise its regulations as necessary and appropriate to conform to any changes.

QUESTION 13: 11 AAC 86.216: Who determines whether a locator has complied with the requirements of AS 38.05.185 – 38.05.275? How is DNR anticipating to make these determinations? These determinations go to validity of a claim – this is a legal determination. What expertise does DNR have to make such a determination and how much work will it take to make fair, reasonable, and defensible determinations?

ANSWER: This proposed regulation attempts to provide more clarity in the future for mining claim locators in the event of situations of overlapping and conflicting mining locations. It also is intended to provide clarity for locators regarding department obligations to inform locators of overlapping locations and regarding authorizations for operations on a claim that overlaps another claim. It also provides clarity regarding the effect of state mineral closures and leasing restrictions on locations.

This proposed regulation does not contemplate or dictate any new regulatory administrative process to make determinations about compliance with the requirements of AS 38.05.185-.275. It merely states that where a claim is overlapping an existing claim that is in compliance with the relevant statutes, the overlapping claim or portion that overlaps the existing claim is void. DNR is the regulatory agency

regarding mining claims regulations and statutes. Where there is a dispute, ultimately a court is the final arbitrator.

QUESTION 14: How does refusal to issue a permit on conflicting claims impact an owner's ability to maintain his claims?

ANSWER: DNR assumes that this question is related to the proposal to add a new section of regulations, 11 AAC .86.216(b). The answers provided to question 6 above address the issues, purposes and intended benefits from this proposed regulation.

If the prior location is a location compliant with all relevant statutory and regulatory requirements, then the overlapping location is void. Under the proposed regulation, if a locator submits an application for a permit or plan of operations on a location that is in conflict with a prior location, DNR will not issue an authorization to the overlapping locator. Refusal to issue a permit on an overlapping claim would not have any direct effect on the overlapping claimant's property rights, as, for example, the overlapping locator could pay cash in lieu of labor.

QUESTION 15: Please explain why the Department maintains the concept that failure to accurately set out essential facts causes an affidavit to be void and of no effect? How do these regulations address the recent concerns that inadvertent errors on affidavits can void an affidavit and all the claims to which the affidavit applies?

ANSWER: DNR assumes that this question is related to the proposal to add a new section of regulations, 11 AAC .86.220. The concept that "failure to accurately set out essential facts causes an affidavit to be void and of no effect", is set out in statute, and the language of 220(c) merely references the relevant portion of the state abandonment law, AS 38.05.265(a) which states: "A statement of annual labor that does not accurately set out the essential facts is void and of no effect."

Beyond that explanation, the answers provided to question 7 above address the issues, purposes and intended benefits from this proposed regulation.

QUESTION 16: 11 AAC 86.220(c): Why does the Department need the name and address of the person recording the statement of annual labor? How will you use and apply this information, for instance, is this the title company or secretary that pushes the button to e-record, or the messenger physically sent to the recorder's office? Shouldn't this be the person certifying that the information in the affidavit is true and correct (a person with knowledge of the mining activities)?

ANSWER: The recorder's office requires that a recorded document must contain the name and complete mailing address (including zip code) of the person whom the

document may be returned to after recording. Failure to clearly identify the return to information will result in non-acceptance. 11 AAC 06.070 specifies that the original recorded document is to be returned either to the person identified on the document or to the person who presented it. Electronically recorded documents are to be returned to the person identified on the document.

The Department included this requirement as a non-essential fact to assist miners in meeting the requirements of the recorder's office. The department welcomes comments on this proposed regulation.

QUESTION 17: How do the proposed regulations protect the claim block if there is an error in one claim? Our read of this section implies that one error eliminates the entire statement.

ANSWER: The answers provided to questions 1 -10 above address the issues, purposes and intended benefits from the individual regulation proposals.

Through these proposed regulations, DNR is proposing to limit the "essential facts" required on a statement of annual labor to three "essential facts", the ADL number or the claim name; the name and address of one claim owner, and the labor, carry forward labor, and/or payment claimed to satisfy the annual labor requirement.

Whether an error invalidates the entire statement or abandons a claim depends on the nature of the error made on the statement of annual labor. A single error does not always result in the abandonment of all claims listed on the statement.

Under the proposed regulations,

1. If a statement of annual labor, does not list any state-issued file numbers or claim names at all on the statement, then the entire statement is void and of no effect;
2. If no valid statement is recorded for a mining location by November 30<sup>th</sup> following the close of the labor year, then that location is subject to abandonment.

The same applies if no owner is included or no labor and/or payment is claimed.

However, if a statement of annual labor is recorded that omits just one particular claim from a claim block, then only that one particular claim from the block is subject to abandonment, not the rest of claim block listed on the statement.

Similarly, if adequate labor and/or payment is not described for only one of the claims in a claim block, then only the one omitted mining location is subject to abandonment, not the rest of claim block for which labor was claimed on the statement.

QUESTION 18: 11 AAC 86.220(g). Please provide definition of accurately. Please explain why the Department believes this will improve the current problems with mineral tenure, as

industry anticipates it will in fact worsen the situation. Perhaps the largest problem of all is that an affidavit with an inaccuracy cannot be amended. Currently, amendment can be done provided there is no conflicting claim. How does DNR think this solves the problem?

ANSWER: The term “accurately” is not currently defined either in state mining law or regulations. When no definition is provided, DNR relies on the common use definition of the word.

Webster’s New World Dictionary, second edition, defines “accurately” as: “free from mistakes or errors; precise.”

Another source defines “accurately” as; 1: free from error especially as the result of care an accurate diagnosis; 2: conforming exactly to truth or to a standard: exact: providing accurate color; 3: able to give an accurate result: an accurate gauge.

The question states that the proposed regulation revision will worsen the situation, but does not explain how it will worsen the situation.

Through these proposed regulations, DNR is proposing to limit the “essential facts” required on a statement of annual labor to three “essential facts”; the ADL number or the claim name; the name and address of one claim owner; and the labor and/or payment claimed to satisfy the annual labor requirement. DNR believes that the proposed regulation changes will significantly improve, not worsen, the ability for mining rights holders to avoid making errors of statements of annual labor that cause abandonment of claims.

Currently, an affidavit that accurately sets out the essential facts may be amended under AS 38.05.210(c), however, an affidavit that does not accurately set out the essential facts is void and may not be amended. The proposed regulatory changes to 11 AAC 86.220(g) do not change that basic requirement. Instead, the proposed regulations limit the number of essential facts. Under AS 38.05.210(c), a statement may be amended to change non-essential facts within two years of the date by which the statement was required. Also, AS 38.05.265(b) allows a miner to record a new statement of annual labor containing the essential facts if there are no conflicting claims or if the claim area has not been closed to mineral location.

QUESTION 19: Why does the Department propose the changes to 11 AAC 86.220(h)? Please provide background on potential problems that this would solve? What is the reason for these provisions?

ANSWER: The answers provided to question 7 above address the issues, purposes and intended benefits from this regulation proposal. Currently, 11 AAC 86.220(h) states that payment must be received by DNR by September 1<sup>st</sup> to be valid. This change would incorporate the decision and holdings of the Alaska Supreme Court in *Chalovich v. State, Dept. of Natural Resources*, 104 P.3d 125 (Alaska 2004). In this case, the court ruled that “a miner who mails payment on or before September 1, and who can verify the date of such mailing through a postmark, has performed

annual labor by the end of the mining year.” (See page 134 of decision). This proposed regulation also contain an end date of 90 days (November 30<sup>th</sup>) to provide ultimate closure on whether a miner had paid in lieu of performing annual labor. DNR assumes that 90 days is a sufficient window of time to expect delayed mail in rural Alaska to reach the department, but the department welcomes comments on what the public proposes is a reasonable window of time.

QUESTION 20: What is 11 AAC 86.220(i) intended to do? The language is unclear as to what it is intended to accomplish. Please clarify.

ANSWER: The answers provided to question 7 above address the issues, purposes and intended benefits from this regulation proposal. The department proposed this change with the intent of providing clear guidance on how excess annual labor may be applied to the next four years of annual labor requirements. This proposed regulation is intended to make it clear that if excess labor is to be applied to a future year’s annual labor requirements, the amount of the excess labor must be set out in the statement of annual labor under 11 AAC 86.220(c), such that it can be determined whether there is any excess labor carried forward from past years.

QUESTION 21: 11 AAC 86.220(i), (k), and (g) are inconsistent. If (k) requires clarification of dates labor was performed, how does one clarify if (g) prohibits amendment of an affidavit that is not accurate?

ANSWER: The answers provided to question 7 above address the issues, purposes and intended benefits from this regulation proposal.

DNR does not believe the provisions (i), (k), and (g) are inconsistent. A statement that does not accurately set out the essential facts is void and may not be amended. However, under the proposed regulations, the date of performance of labor in the proposed regulation would not be an essential fact. Therefore, the affidavit could be amended or clarified for that purpose.

Proposed 11 AAC 86.220(k) would address what happens under the proposed regulations when a mining right holder indicates on their statement of annual labor a period of labor that exceeds the mining year for which they are recording the statement. Further, it is not uncommon for a miner to include labor on a statement of labor performed during a time period after the close of the labor year for which the statement is being recorded. This proposed change sets out that if a mining right holder who otherwise properly records a statement of annual labor, to include setting out the essential facts, but cites labor that includes labor *beyond* the end of the labor year, the miner would be allowed an opportunity to clarify which portion of the labor performed was performed during the labor year being reported.

For example: a mining right holder reports that they completed \$150 worth of annual labor on their 40-acre claim, but did so between June 1<sup>st</sup> and October 1<sup>st</sup>.

The example performance period spans two separate labor years and it is unclear whether sufficient labor (\$100) was performed on the claim between June 1<sup>st</sup> and the end of the labor year on September 1<sup>st</sup>, and how much work was done between September 1<sup>st</sup> and October 1<sup>st</sup>.

This proposed regulation would afford the mining right holder with notification of the need for clarification and allow the mining right holder 90 days from notice by the department to clarify whether the statement reports sufficient labor for the labor year at issue. The proposed regulation also provides that if the mining right holder fails to clarify the statement within the 90 days, the statement would be deemed void.

QUESTION 22: If a mistake (essential fact) is found on either a Location or an Affidavit of Annual Labor form, when is the claim considered abandoned?

- A. Is it abandoned when the mistake was made? If so, how can it be considered abandoned at that point, if DNR has it listed as active on the LAS, has been collecting rent, issuing mining licenses, allowing APMA's and collecting Royalty and License tax on the claim to date?  
If [it] is considered abandoned when the mistake was made, then the present claim holder may relocate the claim, provided one year has passed? ("A claim holder may not relocate their own claim within one year of abandonment")
- B. Is it abandoned when the mistake is found? If it is abandoned when the mistake is found, I understand that there is a time of correction and a penalty can be paid to redeem the claim, unless someone else beats them to it with a new location.

This is not right! That redemption time should be to allow the original claim holder the right to protect his investment, not let someone else take over. There needs to be protection from "vultures" who research records and relocate "active" mining claims.

ANSWER: Under AS 38.05.265 "A statement of annual labor that does not accurately set out the essential facts is void and of no effect." Failure to properly record a statement of labor that accurately sets out the essential facts by November 30<sup>th</sup> of that labor year constitutes abandonment at that time under AS 38.05.265.

If a location is abandoned under AS 38.05.265, then the law states that the land is open to location by others, unless the failure constituting the abandonment is cured under AS 38.05.265(b). That is, the holder may pay a penalty fee and record an accurate statement of annual labor at any time after the abandonment, unless the land is located by another or closed to location before that new recordation. In other words, if another person makes a location on the property before the penalty is paid and an accurate statement of annual labor is recorded, the abandonment cannot be cured. If the state closes the property to mineral location before the accurate statement of

annual labor is recorded, the abandonment cannot be cured.

While DNR strives to maintain these records timely, many factors prevent instantaneous updates to these records. For example, under AS 38.05.195, a person has up to 45 days from the date of claim location to record their claim. The date of location, not recordation, establishes the claim. That means that while the land may appear to be open to location on LAS, Alaska mapper, or at the recorder's office, a claim may have been located on the land up to 45 days ago.

The State of Alaska's mining location laws prescribe a system by which mining locations are self-acquired and maintained by the mining locator themselves, not by DNR. This means that the locator, not DNR, is responsible for maintaining their claims and complying with state mining law. DNR does its best to maintain public records, collect rents and royalties on these claims, and provide notifications that abandonment has occurred. However, mining locators are ultimately responsible to make sure that they comply with the mining laws and failure to do so can trigger abandonment, with or without DNR's involvement. Unfortunately, this system can put locators at odds with each other. Therefore, it is imperative that locators are as diligent as possible in meeting the requirements of the law to maintain their claims.

This is one of the main reasons DNR is proposing revisions to its regulations. DNR is seeking to minimize the essential facts that are required on a statement of annual labor in order to significantly reduce the number of errors that could trigger an abandonment of a location for failing to "accurately setting out the essential facts."

If the abandonment occurred more than one year ago, and the land has not been located by another or closed to mineral location by the state, another option is to locate a new claim rather than cure the abandonment as described above.

QUESTION 23. If a person is allowed to relocate an "active - abandoned" mining claim, who is responsible for the reclamation or other issues with that claim?

ANSWER: Under AS 27.19.070, a miner who does not conduct reclamation of his operation in compliance with AS 27.19.020 is liable to the state in a civil action for the full amount of reclamation. Reclamation may be accomplished under an authorization issued by the department. This question is beyond the scope of the proposed regulations.