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**OFFICE OF THE LIEUTENANT GOVERNOR  
ALASKA**

**M E M O R A N D U M**

**TO:** Molly Benson  
Department of Natural Resources

**FROM:** April Simpson, Office of the Lieutenant Governor 465.4081 

**DATE:** September 28, 2022

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

Department of Natural Resources regulations re: Division of Mining, Land and Water - Mining Regulations; SLA 2020, Chapter 31 (SB 155) (11 AAC 86)

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Attorney General File:	2020200613
Regulation Filed:	9/28/2022
Effective Date:	10/28/2022
Print:	244, January 2023

cc with enclosures: Colleen Bailey, Department of Law  
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO REGULATIONS  
OF THE DEPARTMENT OF NATURAL RESOURCES

The attached 11 pages of regulations, dealing with Senate Bill 155 related mining regulations in 11 AAC 86 and 11 AAC 88, 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 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date:

09/15/2022

Vasilios Gialopsos

Vasilios Gialopsos, Acting Commissioner  
Alaska Department of Natural Resources

April Simpson for  
↑

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on

September 28, 2022, at 9:10 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

for Kevin Meyer  
Kevin Meyer  
Lieutenant Governor

Effective:

October 28, 2022

Register:

244, January 2023.

**FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY**

**I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA,  
designate the following state employees to perform the Administrative Procedures Act  
filing functions of the Office of the Lieutenant Governor:**

**Josh Applebee, Chief of Staff  
Kady Levale, Notary Administrator  
April Simpson, Regulations and Initiatives Specialist**

**IN TESTIMONY WHEREOF, I have  
signed and affixed the Seal of the State of  
Alaska, in Juneau, on December 11th,  
2018.**



*Kevin Meyer*  
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**KEVIN MEYER  
LIEUTENANT GOVERNOR**

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11 AAC 86.100 is amended to read:

**11 AAC 86.100. Applicability.** The provisions of this chapter apply to the acquisition of mineral rights under AS 38.05.185 - 38.05.275 and 38.05.880 [AS 38.05.185 - AS 38.05.280].

(Eff. 9/15/74, Register 51; am 10 / 28 / 2022 Register 244)

**Authority:** AS 27.05.010 AS 38.05.020 [AS 38.05.020(b)]

11 AAC 86.115(b) is amended to read:

(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. If [, UNLESS] the conveyance restricts or bars the location, or [UNLESS] a state mineral closure is in effect **for all lands within the location** on the date of the conveyance, **the location made on state-selected land is void. For a state-selected location in which only part of the land is restricted, location is barred, or a state mineral closure is in effect, only those portions of the location affected by the restriction, bar, or state mineral closing order are void.** 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.

11 AAC 86.115(c) is amended to read:

(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, and the department will assign a unique location number to that continued location.

11 AAC 86.115 is amended by adding new subsections to read:

(f) A state-selected mining claim posted on one or more unpatented federal mining claims must have the written and recorded permission of the holders of the unpatented federal mining claims. In accordance with AS 38.05.275(a), written and recorded permission to locate a mining claim on state-selected land located within one or more active unpatented federal mining claims must be attached to the location certificate, must be notarized, and must include the following information:

(1) the full name of each person who posted the location on the state-selected land; each person who posted must be qualified to locate state mining claims under AS 38.05.190;

(2) the full names of all owners of possessory interest in the active unpatented federal claims affected by the location;

(3) the claim number and name of each federal claim; and

(4) signed statements from the federal claim holders authorizing the locator to place the state-selected location within the active unpatented federal mining claims.

(g) If simultaneously recording certificates for contiguous state-selected mining claims

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posted on one or more active unpatented federal mining claims, the locator shall

(1) attach the signed statements of authorization to each location certificate; or

(2) attach the signed statements of authorization to a single certificate of location,

and cross-reference that certificate of location on each other certificate of location to which the statements of authorization apply.

(h) Failure to attach signed statements of authorization as specified in (g) of this section voids the claim. (Eff. 9/5/74, Register 51; am 5/30/85, Register 94; am 5/18/90, Register 114; am 8/26/98, Register 147; am 4/24/99, Register 150; am 10/28/2022, Register 244)

**Authority:** AS 27.05.010 AS 38.05.185 AS 38.05.275  
AS 38.05.020 AS 38.05.211

11 AAC 86 is amended by adding a new section to read:

**11 AAC 86.121. Qualifications.** (a) Exploration and mining rights under AS 38.05.185 on state land require that a person be qualified at the time of location and remain qualified under AS 38.05.190, except as provided in AS 38.05.190(b).

(b) In order to remain qualified,

(1) a corporation, limited liability company, or other entity described in AS 38.05.190(a)(5) must hold a certificate that complies with AS 38.05.190(g); a corporation that is involuntarily dissolved, or a certificate that is canceled or revoked constitutes the loss of qualification, and may result in a declaration by the department that the mineral interest is void after notification and an opportunity to cure in accordance with AS 38.05.190(b) - (f);

(2) a trust and the designated trustee must comply with requirements of

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AS 38.05.190(a)(6), and the failure to do so may result in a declaration by the department that the mineral interest is void after notification and an opportunity to cure in accordance with AS 38.05.190(b) - (f); and

(3) all members of an association described in AS 38.05.190(a)(7) must maintain their individual qualifications, and the failure to do so may result in a declaration by the department that the mineral interest is void after notification and an opportunity to cure in accordance with AS 38.05.190(b) - (f).

(c) A declaration by the department that a mineral interest is void due to the failure to become or remain qualified as required under (a) of this section, results in the unqualified person losing all rights to exploration or mineral interests. That person may become qualified or requalify under AS 38.05.190(b) or (e), at which point that person may acquire or hold new rights in exploration or mining interests under AS 38.05.185 - 38.05.275 and associated regulations.

(d) The department may request proof of qualification under AS 38.05.190 at any time.

(Eff. 10 / 29 / 2022, Register 244)

**Authority:** AS 27.05.010      AS 38.05.020      AS 38.05.190

11 AAC 86.140 is amended to read:

**11 AAC 86.140. Drawing of prior existing locations.** The requirement under 11 AAC 86.210(4), **11 AAC 86.215(a)(7)** [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 **the** [HIS] location to adjacent and contiguous mining claims, leasehold locations, and prospecting sites held by other parties is for

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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. (Eff. 9/5/74, Register 51; am 12/31/82, Register 84; am 10 / 28 / 2022, Register 244)

Authority: AS 27.05.010 AS 38.05.020 [AS 38.05.020(b)]

11 AAC 86.202(a) is amended to read:

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

(Eff. 1/19/2002, Register 161; am 10 / 28 / 2022, Register 244)

Authority: AS 27.05.010 AS 38.05.195 AS 38.05.211  
AS 38.05.020 AS 38.05.205

11 AAC 86.215(a)(2) is amended to read:

(2) the dates, including for each date the month, day, and year, of both the locator's discovery and [THE DATE OF] posting of the notice of location;

11 AAC 86.215(a)(5) is amended to read:

(5) the name and current mailing address of each locator, [AND] the signature of each locator or of the locator's agent, and, if the location is made on behalf of a trust, the name and mailing address of at least one trustee who is a person described in  
AS 38.05.190(a)(1) - (5);



11 AAC 86.215(a)(7) is amended to read:

(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 surveyed section line or, if unavailable, 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, mineral orders, and non-state land; if the locator is simultaneously recording contiguous locations [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 and that certificate must be [IF THE DOCUMENT TO WHICH THE MAP IS ATTACHED IS] cross-referenced on each other certificate of location to which the map applies.

11 AAC 86.215(b) is amended to read:

(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 under AS 38.05.265(a).

11 AAC 86.215 is amended by adding a new subsection to read:

(g) A location that is posted under AS 38.05.195(b) and that includes both a mining claim and a leasehold location must be assigned separate and distinct location numbers for each type of location. (Eff. 9/5/74, Register 51; am 12/31/82, Register 84; am 5/30/85, Register 94;

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am 5/18/90, Register 114; am 8/26/98, Register 147; am 1/19/2002, Register 161; am

10 / 28 / 2022, Register 244 )

Authority: <u>AS 27.05.010</u>	AS 38.05.195	AS 38.05.211
AS 38.05.020	AS 38.05.205	AS 38.05.265

11 AAC 86.220(b) is amended to read:

(b) The provisions of AS 38.05.240 include examples of qualifying labor. Work performed outside the boundaries of the location must develop or benefit the location to qualify as annual labor within the meaning of AS 38.05.240. Definitions set out in AS 38.05.242 apply for purposes of AS 38.05.240(a)(9). [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.]

11 AAC 86.220(c) is repealed:

(c) Repealed 10 / 28 / 2022

11 AAC 86.220(d) is amended to read:

(d) A statement of annual labor [AN AFFIDAVIT] required by this section must [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.

11 AAC 86.220(g) is amended to read:

(g) A statement [AN AFFIDAVIT] of annual labor may be amended under AS 38.05.210 [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].

11 AAC 86.220(h) is amended to read:

(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 1 [1ST] of each year. If mailed, payment must be postmarked on or before September 1. The payment must be accompanied by a copy of a statement [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 a statement [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) [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 a statement [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]. A cash payment will be accepted only for the current labor year.

11 AAC 86.220 is amended by adding new subsections to read:

- (i) For the purpose of AS 38.05.210, "held in common" means under common control.

Common control may result from any combination of outright ownership, leases, option, earn-in arrangements, exploration agreements, joint ventures, or any other arrangements under which a party has the right to conduct operations to explore for, develop, or mine minerals. Labor performed on or for the benefit of any portion of the area held in common may be used to satisfy the labor requirements for all portions of the area held in common.

(j) The owner of a mining claim, leasehold location, or mining lease may apply a combination of excess carryover labor, actual performed labor recorded, and cash payment to the state equal to the value of labor required to meet the minimum annual labor requirements. The cash payment equal to the value of labor required must meet the requirements of (h) of this section, and the carryover labor and cash payments in lieu of labor are subject to the respective four- and five-year limitations on use of excess carryover labor value and cash payments under AS 38.05.210(a). (Eff. 9/5/74, Register 51; am 12/31/82, Register 84; am 5/30/85, Register 94; am 5/18/90, Register 114; am 8/26/98, Register 147; am 10 / 28 / 2022, Register 244)

<b>Authority:</b>	AS 27.05.010	AS 38.05.210	AS 38.05.242
	AS 38.05.020	<u><b>AS 38.05.240</b></u>	AS 38.05.265

11 AAC 86.223(a) is amended to read:

**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;

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(2) any [A] person or association described in AS 38.05.190(a) that owned a possessory [AN] interest in the locator's or claimant's location; or

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

(Eff. 8/26/98, Register 147; am 1/19/2002, Register 161; am 10 / 28 / 2022 Register 244 )

**Authority:** AS 38.05.020      AS 38.05.190      AS 38.05.265

11 AAC 86.314 is amended to read:

**11 AAC 86.314. Annual labor.** The annual labor requirements set out in AS 38.05.210 and 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). (Eff. 8 1/19/2002, Register 161; am 10 / 28 / 2022, Register 244 )

**Authority:** AS 27.05.010      AS 38.05.035      AS 38.05.265  
AS 38.05.020      AS 38.05.210

11 AAC 88.185 is amended by adding a new paragraph to read:

(38) "state-selected land" has the meaning given in AS 38.05.275(b). (Eff. 9/5/74, Register 51; am 3/27/82, Register 81; am 5/30/85, Register 94; am 5/18/90, Register 114; am

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5/22/93, Register 126; am 9/10/98, Register 147; am 12/26/2019, Register 232; am

10/28/2022, Register 244)

**Authority:** AS 38.05.020 AS 38.05.177