

Sec. 38.05.180. Oil and gas and gas only leasing.

(a) The legislature finds that

(1) the people of Alaska have an interest in the development of the state's oil and gas resources to

(A) maximize the economic and physical recovery of the resources;

(B) maximize competition among parties seeking to explore and develop the resources;

(C) maximize use of Alaska's human resources in the development of the resources;

(2) it is in the best interests of the state

(A) to encourage an assessment of its oil and gas resources and to allow the maximum flexibility in the methods of issuing leases to

(i) recognize the many varied geographical regions of the state and the different costs of exploring for oil and gas in these regions;

(ii) minimize the adverse impact of exploration, development, production, and transportation activity; and

(B) to offer acreage for oil and gas leases or for gas only leases, specifically including

(i) state acreage that has been the subject of a best interest finding at annual areawide lease sales; and

(ii) land in areas that, under (d) of this section, may be leased without having been included in the leasing program prepared and submitted under (b) of this section.

(b) The commissioner shall annually prepare and, before February 1 of each calendar year notify the legislature of a five-year program of proposed oil and gas lease sales and proposed gas only lease sales, specifying as precisely as practicable the location of tracts to be offered for leasing during the calendar year of the notification and the following four calendar years. The commissioner may, at any time, notify the legislature of revisions, including additions, to the program. Notification to each legislator, by electronic message or other written means, constitutes notification to the legislature under this subsection.

(c) Except as provided in (d) and (w) of this section, an oil and gas lease sale or gas only lease sale may not be held unless it was included in the proposed leasing programs submitted to the legislature during the two calendar years preceding the year in which the sale is held. A lease sale, whether for oil and gas or for gas only, may not be held before the date it is scheduled in the proposed oil and gas leasing program.

(d) The commissioner

(1) may annually offer leases for oil and gas or leases for gas only of the acreage described in AS 38.05.035(e)(6)(F);

(2) may issue leases in an area that has not been included in a leasing program prepared, in accordance with (b) of this section, if the land to be leased

(A) was previously subject to a valid state oil and gas lease, a valid state gas lease, or a valid federal oil and gas lease;

(B) is contiguous to land already under state, federal, or private lease and the commissioner makes a written finding, after hearing, that leasing of the land would result in a substantial probability of early evaluation and development of the land to be leased;

(C) is adjacent to land owned or controlled by another party on which a discovery of commercial quantities of oil or gas has been made, and the commissioner finds, after hearing, that there is a reasonable probability that the land to be leased contains oil or gas in communication with the oil or gas discovered on the land of the other party;

(D) is adjacent to land included in the federal five-year Outer Continental Shelf leasing program under 43 U.S.C. 1344, and the commissioner makes a written finding, after hearing, that coordinated or simultaneous leasing with the federal government is in the public interest; or

(E) is the subject of an exploration license issued under AS 38.05.131 - 38.05.134; however, if the license issued was for exploration for and recovery of gas only, then the lease issued under this subsection shall be limited to exploration for and recovery of gas only.

(e) The commissioner shall annually prepare and notify the legislature of the availability of a report containing the following:

(1) the schedule of all lease sales held during the preceding calendar year, the bidding method or methods utilized, and an analysis of the results of the bidding;

(2) if determined, a description of the bidding methods to be used for all lease sales to be held during the current and next two succeeding calendar years;

(3) the reasons a particular bidding method has been selected.

(f) Except as provided by AS 38.05.131 - 38.05.134, the commissioner may issue oil and gas leases or leases for gas only on state land **to the highest responsible qualified bidder** as follows:

(1) **the commissioner shall issue an oil and gas lease or a gas only lease, as appropriate, to the successful bidder determined by competitive bidding under regulations adopted by the commissioner;** bidding may be by sealed bid or according to any other bidding procedure the commissioner determines is in the best interests of the state;

(2) whenever, under any of the leasing methods listed in this subsection, a royalty share is reserved to the state, it shall be delivered in pipeline quality and free of all lease or unit expenses, including but not limited to separation, cleaning, dehydration, gathering, salt water disposal, and preparation for transportation off the lease or unit area;

(3) **following a pre-sale analysis, the commissioner may choose at least one of the following leasing methods:**

(A) a cash bonus bid with a fixed royalty share reserved to the state of not less than 12.5 percent in amount or value of the production removed or sold from the lease;

(B) a cash bonus bid with a fixed royalty share reserved to the state of not less than 12.5 percent in amount or value of the production removed or sold from the lease **and a fixed share of the net profit derived from the lease of not less than 30 percent reserved to the state;**

(C) a fixed cash bonus with a royalty share reserved to the state as the bid variable but no less than 12.5 percent in amount or value of the production removed or sold from the lease;

(D) a fixed cash bonus with the share of the net profit derived from the lease reserved to the state as the bid variable;

(E) a fixed cash bonus with a fixed royalty share reserved to the state of not less than 12.5 percent in amount or value of the production removed or sold from the lease with the share of the net profit derived from the lease reserved to the state as the bid variable;

(F) a cash bonus bid with a fixed royalty share reserved to the state based on a sliding scale according to the volume of production or other factor but in no event less than 12.5 percent in amount or value of the production removed or sold from the lease;

(G) a fixed cash bonus with a royalty share reserved to the state based on a sliding scale according to the volume of production or other factor as the bid variable but not less than 12.5 percent in amount or value of the production removed or sold from the lease;

(4) notwithstanding a requirement in the leasing method chosen of a minimum fixed royalty share, on and after March 3, 1997, **the lessee under a lease issued in the Cook Inlet sedimentary basin who is the first to file with the commissioner a nonconfidential sworn statement claiming to be the first to have drilled a well discovering oil or gas in a previously undiscovered oil or gas pool and who is certified by the commissioner within one year of completion of that discovery well to have drilled a well in that pool that is capable of producing in paying quantities shall pay a royalty of five percent on all production of oil or gas from that pool attributable to that lease for a period of 10 years following the date of discovery of that pool, and thereafter the royalty payable on all production of oil or gas from the**

pool attributable to that lease shall be determined and payable as specified in the lease; for purposes of this paragraph, the reduced royalty authorized by this paragraph is subject to the following:

(A) only one reduction of royalty authorized by this paragraph may be allowed on each lease that qualifies for reduction of royalty under this paragraph;

(B) if, under this paragraph, application is made for a royalty reduction for a lease that was entered into before March 3, 1997, the commissioner may approve the application only if, on that date, the lease was a nonproducing lease that was not committed to a unit approved by the commissioner under (m) of this section, that is not part of a unit under (p) or (q) of this section, and that has not been made part of a unit under AS 31.05;

(C) if application for a royalty reduction is made under this paragraph for a lease on which a discovery royalty was claimed or may be claimed under the discovery royalty provisions of former AS 38.05.180(a) in effect before May 6, 1969, the commissioner shall disallow the application under this paragraph unless the applicant waives the right to claim the right to a reduced royalty under the discovery royalty provisions of former AS 38.05.180(a) in effect before May 6, 1969; and

(D) the commissioner shall adopt regulations setting out the standards, criteria, and definitions of terms that apply to implement the filing of applications for, and the review and certification of, discovery certifications under this paragraph;

(5) notwithstanding and in lieu of a requirement in the leasing method chosen of a minimum fixed royalty share, or the royalty provision of a lease, for leases unitized as described in (p) of this section, leases subject to an agreement described in (s) or (t) of this section, or interests unitized under AS 31.05, the lessee of all or part of an oil or gas field identified in this section that has been granted approval of a written plan submitted to the Alaska Oil and Gas Conservation Commission under AS 31.05.030(i) shall, subject to (dd) of this section, **pay a royalty of five percent on the first 25,000,000 barrels of oil** and the first 35,000,000,000 cubic feet of gas produced for sale from that field that occurs in the 10 years following the date on which the production for sale commences; the fields eligible for royalty reduction under this paragraph, all of which are located within the Cook Inlet sedimentary basin, were discovered before January 1, 1988, and have been undeveloped or shut in from at least January 1, 1988, through December 31, 1997, are

- (A) Falls Creek;
- (B) Nicolai Creek;
- (C) North Fork;
- (D) Point Starichkof;
- (E) Redoubt Shoal; and
- (F) West Foreland;

(6) notwithstanding and in lieu of a requirement in the leasing method chosen of a minimum fixed royalty share, or the royalty provision of a lease, for leases unitized as described in (p) of this section, leases subject to an agreement described in (s) or (t) of this section, or interests unitized under AS 31.05, the lessee of all or part of an oil field located offshore in Cook Inlet on which an oil production platform specified in (A), (C), or (E) of this paragraph operates, or the lessee of all or part of the field located offshore in Cook Inlet and described in (G) of this paragraph,

(A) shall pay a royalty of five percent on oil produced from the platform if oil production that equaled or exceeded a volume of 1,200 barrels a day declines to less than that amount for a period of at least one calendar quarter, as certified by the Alaska Oil and Gas Conservation Commission, for as long as the volume of oil produced from the platform remains less than 1,200 barrels a day; the provisions of this subparagraph apply to

- (i) Dolly;
- (ii) Grayling;
- (iii) King Salmon;

- (iv) Steelhead; and
- (v) Monopod;

(B) shall pay a royalty calculated under this subparagraph if the volume of oil produced from the platform that was certified by the Alaska Oil and Gas Conservation Commission under (A) of this paragraph later increases to 1,200 or more barrels a day and remains at 1,200 or more barrels a day for a period of at least one calendar quarter; until the royalty rate determined under this subparagraph applies, the royalty continues to be calculated under (A) of this paragraph; on and after the first day of the month following the month the increased production exceeds the period specified in this subparagraph, the royalty payable under this subparagraph is

- (i) for production of at least 1,200 barrels a day but not more than 1,300 barrels a day - seven percent;
- (ii) for production of more than 1,300 barrels a day but not more than 1,400 barrels a day - 8.5 percent;
- (iii) for production of more than 1,400 barrels a day but not more than 1,500 barrels a day - 10 percent; and
- (iv) for production of more than 1,500 barrels a day - 12.5 percent;

(C) shall pay a royalty of five percent on oil produced from the platform if oil production that equaled or exceeded a volume of 975 barrels a day declines to less than that amount for a period of at least one calendar quarter, as certified by the Alaska Oil and Gas Conservation Commission, for as long as the volume of oil produced from the platform remains less than 975 barrels a day; the provisions of this subparagraph apply to

- (i) Baker;
- (ii) Dillon;
- (iii) XTO.A; and
- (iv) XTO.C;

(D) shall pay a royalty calculated under this subparagraph if the volume of oil produced from the platform that was certified by the Alaska Oil and Gas Conservation Commission under (C) of this paragraph later increases to 975 or more barrels a day and remains at 975 or more barrels a day for a period of at least one calendar quarter; until the royalty rate determined under this subparagraph applies, the royalty continues to be calculated under (C) of this paragraph; on and after the first day of the month following the month the increased production exceeds the period specified in this subparagraph, the royalty payable under this subparagraph is

- (i) for production of at least 975 barrels a day but not more than 1,100 barrels a day - seven percent;
- (ii) for production of more than 1,100 barrels a day but not more than 1,200 barrels a day - 8.5 percent;
- (iii) for production of more than 1,200 barrels a day but not more than 1,350 barrels a day - 10 percent; and
- (iv) for production of more than 1,350 barrels a day - 12.5 percent;

(E) shall pay a royalty of five percent on oil produced from the platform if oil production that equaled or exceeded a volume of 750 barrels a day declines to less than that amount for a period of at least one calendar quarter, as certified by the Alaska Oil and Gas Conservation Commission, for as long as the volume of oil produced from the platform remains less than 750 barrels a day; the provisions of this subparagraph apply to

- (i) Granite Point;
- (ii) Anna; and
- (iii) Bruce;

(F) shall pay a royalty calculated under this subparagraph if the volume of oil produced from the platform that was certified by the Alaska Oil and Gas Conservation Commission under (E) of this paragraph later increases to 750 or more barrels a day and remains at 750 or more barrels a day for a period of at least one calendar quarter; until the royalty rate determined under this subparagraph applies, the royalty continues to be calculated under (E) of this paragraph; on and after the first day of the month following the month the increased production exceeds the period specified in this subparagraph, the royalty payable under this subparagraph is

- (i) for production of at least 750 barrels a day but not more than 850 barrels a day - seven percent;
- (ii) for production of more than 850 barrels a day but not more than 1,000 barrels a day - 8.5 percent;
- (iii) for production of more than 1,000 barrels a day but not more than 1,200 barrels a day - 10 percent; and
- (iv) for production of more than 1,200 barrels a day - 12.5 percent;

(G) shall pay a royalty of five percent on oil produced from the field if oil production that equaled or exceeded a volume of 750 barrels a day declines to less than that amount for a period of at least one calendar quarter, as certified by the Alaska Oil and Gas Conservation Commission, for as long as the volume of oil produced from the field remains less than 750 barrels a day; the provisions of this subparagraph apply to the West McArthur River field;

(H) shall pay a royalty calculated under this subparagraph if the volume of oil produced from the field that was certified by the Alaska Oil and Gas Conservation Commission under (G) of this paragraph later increases to 750 or more barrels a day and remains at 750 or more barrels a day for a period of at least one calendar quarter; until the royalty rate determined under this subparagraph applies, the royalty continues to be calculated under (G) of this paragraph; on and after the first day of the month following the month the increased production exceeds the period specified in this subparagraph, the royalty payable under this subparagraph is

- (i) for production of at least 750 barrels a day but not more than 850 barrels a day - seven percent;
- (ii) for production of more than 850 barrels a day but not more than 1,000 barrels a day - 8.5 percent;
- (iii) for production of more than 1,000 barrels a day but not more than 1,200 barrels a day - 10 percent; and
- (iv) for production of more than 1,200 barrels a day - 12.5 percent; and

(I) may obtain the benefits of the royalty adjustments set out in (A) - (H) of this paragraph only if the commissioner determines that the reduction in production from the platform or the field is

- (i) based on the average daily production during the calendar quarter based on reservoir conditions; and

(ii) not the result of short-term production declines due to mechanical or other choke-back factors, temporary shutdowns or decreased production due to environmental or facility constraints, or market conditions.

(g) The share of the net profit derived from a lease reserved to the state under (f) of this section is royalty sale proceeds for the purposes of the Alaska permanent fund under AS 37.13.010.

(h) The commissioner may include terms in any lease imposing a minimum work commitment on the lessee. These terms shall be made public before the sale, and may include appropriate penalty provisions to take effect in the event the lessee does not fulfill the minimum work commitment. If it is demonstrated that a lease has been proven unproductive by actions of adjacent lease holders, the commissioner may set aside a work commitment. The commissioner may waive for a period not to exceed one two-year period any term of a minimum work commitment if the commissioner makes a

written finding either that conditions preventing drilling or exploration were beyond the lessee's reasonable ability to foresee or control or that the lessee has demonstrated through good faith efforts an intent and ability to drill or develop the lease during the term of the waiver.

(i) The commissioner may provide for the establishment of an exploration incentive credit system under which a lessee of state land drilling an exploratory well on that land may earn credits based upon the footage drilled and the region in which the well is situated. The commissioner may also provide for credits to be earned by persons performing geophysical work on state land, if that work is performed during the two seasons immediately preceding an announced lease sale and on land included within the sale area and the geophysical information is made public following the sale. Credits may not exceed 50 percent of the cost of the drilling or geophysical work. Credits may be used during a limited period established by the commissioner and may be assigned during that period. Credits may be applied against (1) royalty and rental payments for oil and gas or for gas only payable to the state or (2) taxes payable under AS 43.55. A credit may not exceed 50 percent of the payment toward which it is being applied. Amounts due the Alaska permanent fund (AS 37.13.010) shall be calculated before the application of credits under this subsection.

(j) The commissioner

(1) may provide for modification of royalty on individual leases, leases unitized as described in (p) of this section, leases subject to an agreement described in (s) or (t) of this section, or interests unitized under AS 31.05

(A) to allow for production from an oil or gas field or pool if

(i) the oil or gas field or pool has been sufficiently delineated to the satisfaction of the commissioner;

(ii) the field or pool has not previously produced oil or gas for sale; and

(iii) oil or gas production from the field or pool would not otherwise be economically feasible;

(B) to prolong the economic life of an oil or gas field or pool as per barrel or barrel equivalent costs increase or as the price of oil or gas decreases, and the increase or decrease is sufficient to make future production no longer economically feasible; or

(C) to reestablish production of shut-in oil or gas that would not otherwise be economically feasible;

(2) may not grant a royalty modification unless the lessee or lessees requesting the change make a clear and convincing showing that a modification of royalty meets the requirements of this subsection and is in the best interests of the state;

(3) shall provide for an increase or decrease or other modification of the state's royalty share by a sliding scale royalty or other mechanism that shall be based on a change in the price of oil or gas and may also be based on other relevant factors such as a change in production rate, projected ultimate recovery, development costs, and operating costs;

(4) may not grant a royalty reduction for a field or pool

(A) under (1)(A) of this subsection if the royalty modification for the field or pool would establish a royalty rate of less than five percent in amount or value of the production removed or sold from a lease or leases covering the field or pool;

(B) under (1)(B) or (1)(C) of this subsection if the royalty modification for the field or pool would establish a royalty rate of less than three percent in amount or value of the production removed or sold from a lease or leases covering the field or pool;

(5) may not grant a royalty reduction under this subsection without including an explicit condition that the royalty reduction is not assignable without the prior written approval, which may not be unreasonably withheld, by the commissioner; the commissioner shall, in the preliminary and final findings and determinations, set out the conditions under which the royalty reduction may be assigned;

(6) shall require the lessee or lessees to submit, with the application for the royalty reduction, financial and technical data that demonstrate that the requirements of this subsection are met; the commissioner

(A) may require disclosure of only the financial and technical data related to development, production, and transportation of oil and gas or gas only from the field or pool that are reasonably available to the applicant; and

(B) shall keep the data confidential under AS 38.05.035(a)(8) at the request of the lessee or lessees making application for the royalty reduction; the confidential data may be disclosed by the commissioner to legislators and to the legislative auditor and as directed by the chair or vice-chair of the Legislative Budget and Audit Committee to the director of the division of legislative finance, the permanent employees of their respective divisions who are responsible for evaluating a royalty reduction, and to agents or contractors of the legislative auditor or the legislative finance director who are engaged under contract to evaluate the royalty reduction, if they sign an appropriate confidentiality agreement;

(7) may

(A) require the lessee or lessees making application for the royalty reduction under (1)(A) of this subsection to pay for the services of an independent contractor, selected by the lessee or lessees from a list of qualified consultants compiled by the commissioner, to evaluate hydrocarbon development, production, transportation, and economics and to assist the commissioner in evaluating the application and financial and technical data; if, under this subparagraph, the commissioner requires payment for the services of an independent contractor, the total cost of the services to be paid for by the lessee or lessees may not exceed \$150,000 for each application, and the commissioner shall determine the relevant scope of the work to be performed by the contractor; selection of an independent contractor under this subparagraph is not subject to AS 36.30;

(B) with the mutual consent of the lessee or lessees making application for the royalty reduction under (1)(B) or (1)(C) of this subsection, request payment for the services of an independent contractor, selected from a list of qualified consultants to evaluate hydrocarbon development, production, transportation, and economics by the commissioner to assist the commissioner in evaluating the application and financial and technical data; if, under this subparagraph, the commissioner requires payment for the services of an independent contractor, the total cost of the services that may be paid for by the lessee or lessees may not exceed \$150,000 for each application, and the commissioner shall determine the relevant scope of the work to be performed by the contractor; selection of an independent contractor under this subparagraph is not subject to AS 36.30;

(8) shall make and publish a preliminary findings and determination on the royalty reduction application, give reasonable public notice of the preliminary findings and determination, and invite public comment on the preliminary findings and determination during a 30-day period for receipt of public comment;

(9) shall offer to appear before the Legislative Budget and Audit Committee, on a day that is not earlier than 10 days and not later than 20 days after giving public notice under (8) of this subsection, to provide the committee a review of the commissioner's preliminary findings and determination on the royalty reduction application and administrative process; if the Legislative Budget and Audit Committee accepts the commissioner's offer, the committee shall give notice of the committee's meeting to all members of the legislature;

(10) shall make copies of the preliminary findings and determination available to

(A) the presiding officer of each house of the legislature;

(B) the chairs of the legislature's standing committees on resources; and

(C) the chairs of the legislature's special committees on oil and gas, if any;

(11) shall, within 30 days after the close of the public comment period under (8) of this subsection,

(A) prepare a summary of the public response to the commissioner's preliminary findings and determination;

(B) make a final findings and determination; the commissioner's final findings and determination prepared under this subparagraph regarding a royalty reduction is final and not appealable to the court;

(C) transmit a copy of the final findings and determination to the lessee;

(D) with the applicant's consent, amend the applicant's lease or unitization agreement consistent with the commissioner's final decision; and

(E) make copies of the final findings and determination available to each person who submitted comment under (8) of this subsection and who has filed a request for the copies;

(12) is not limited by the provisions of AS 38.05.134(3) or (f) of this section in the commissioner's determination under this subsection.

(k) The commissioner shall define all terms and adopt all regulations necessary for a reasonable understanding and evaluation of a particular bidding method before the public announcement of the terms of proposed sale employing that method.

(l) Subject to the provisions of AS 31.05, the commissioner has discretion to enter into an agreement whereby, with the consent of the lessee, the state's royalty share of production of oil and gas or gas only may be stored or retained in storage by the lessee, or the commissioner may enter into an agreement with one or more of the affected field lease holders to trade current royalty production from a field for a like amount, kind, and quality of future production, on the condition that the state receives back its stored or traded royalty share during the first half of the estimated field life or no later than 15 years after start of production, whichever is sooner.

(m) An oil and gas lease or a gas only lease must cover a reasonably compact area not exceeding 5,760 acres, and may be for a maximum period of 10 years, except that the commissioner may issue a lease for a period not less than five years upon a finding that it is in the best interests of the state. An oil and gas lease shall be automatically extended if and for so long thereafter as oil or gas is produced in paying quantities from the lease or if the lease is committed to a unit approved by the commissioner, and a gas only lease shall be automatically extended if and for so long thereafter as gas is produced in paying quantities from the lease or if the lease is committed to a unit approved by the commissioner. A lease issued under this section covering land on which there is a well capable of producing oil or gas in paying quantities does not expire because the lessee fails to produce oil or gas unless the lessee is allowed reasonable time to place the well on a producing status. Upon extension, the commissioner may increase lease rentals so long as the increased rental rate does not exceed 150 percent of the rate for the preceding year. If drilling has commenced on the expiration date of the primary term of the lease and is continued with reasonable diligence, including such operations as redrilling, sidetracking, or other means necessary to reach the originally proposed bottom hole location, the lease continues in effect until 90 days after drilling has ceased and for so long thereafter as oil or gas is produced in paying quantities. An oil and gas lease or a gas only lease issued under this section which is subject to termination by reason of cessation of production does not terminate if, within 60 days after production ceases, reworking or drilling operations are commenced on the land under lease and are thereafter conducted with reasonable diligence during the period of nonproduction.

(n) The commissioner may establish by regulation that after a well has been plugged and abandoned, the rental rate which was in effect during the year of abandonment is maintained for the remainder of the term. Rental is payable in advance and continues until income to the state from royalty or net profit share exceeds rental income to the state for that year. Under this subsection,

(1) leases for oil and gas or for gas only shall provide for payment to the state of rental on the following basis:

- (A) for the first year, \$1.00 per acre;
- (B) for the second year, \$1.50 per acre;
- (C) for the third year, \$2.00 per acre;
- (D) for the fourth year, \$2.50 per acre;
- (E) for the fifth and following years, \$3.00 per acre;

(2) if the lessee under a gas only lease demonstrates to the commissioner that the potential resources underlying the lease are reasonably estimated to be only nonconventional gas,

(A) the rental payment is \$1.00 per acre until the lease expires or paying quantities of conventional oil or gas are discovered underlying the lease; and

(B) if the nonconventional gas produced will not be in direct competition with gas on which a royalty at a rate of at least 12.5 percent is payable, then the royalty share payable to the state on all production of gas from the pool attributable to that lease shall be 6.25 percent based upon production delivered in pipeline quality and free of all lease expenses, including separation, cleaning, dehydration, gathering, salt water disposal, and preparation for transportation off the lease.

(o) Upon timely application as provided by regulation, the state may issue to the holder of a federal or private lease, a state shoreland lease covering land within the exterior boundaries of the federal or private lease which has been excluded on the basis of navigability or which is later administratively or judicially determined to be shoreland. The term of such a state shoreland lease shall be the same as the term of the federal or private lease.

(p) To conserve the natural resources of all or a part of an oil or gas pool, field, or like area, the lessees and their representatives may unite with each other, or jointly or separately with others, in collectively adopting or operating under a cooperative or a unit plan of development or operation of the pool, field, or like area, or a part of it, when determined and certified by the commissioner to be necessary or advisable in the public interest. The commissioner may, with the consent of the holders of leases involved, establish, change, or revoke drilling, producing, and royalty requirements of the leases and adopt regulations with reference to the leases, with like consent on the part of the lessees, in connection with the institution and operation of a cooperative or unit plan as the commissioner determines necessary or proper to secure the proper protection of the public interest. The commissioner may not reduce royalty on leases in connection with a cooperative or unit plan except as provided in (j) of this section. The commissioner may require a lease issued under this section to contain a provision requiring the lessee to operate under a reasonable cooperative or unit plan, and may prescribe a plan under which the lessee must operate. The plan must adequately protect all parties in interest, including the state.

(q) A plan authorized by (p) of this section, which includes land owned by the state, may contain a provision vesting the commissioner, or a person, committee, or state agency, with authority to modify from time to time the rate of prospecting and development and the quantity and rate of production under the plan. All leases operated under a plan approved or prescribed by the commissioner are excepted in determining holdings or control under AS 38.05.140. The provisions of this section concerning cooperative or unit plans are in addition to and do not affect AS 31.05.

(r) Producing acreage on a known geologic structure of a producing oil or gas field is excluded from chargeability as against the acreage limitation provisions of AS 38.05.140.

(s) When separate tracts cannot be individually developed and operated in conformity with an established well-spacing or development program, a lease, or a portion of a lease, may be pooled with other land, whether or not owned by the state, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the commissioner to be in the public interest. Operations or production under the agreement are considered as operations or production as to each lease

committed to the agreement. The commissioner may not reduce royalty on leases in connection with a communication or drilling agreement except as provided in (j) of this section.

(t) The commissioner may prescribe conditions and approve, on conditions, drilling, or development contracts made by one or more lessees of oil or gas leases, with one or more persons, when, in the discretion of the commissioner, the conservation of natural resources or the public convenience or necessity requires it or the interests of the state are best served. All leases operated under approved drilling or development contracts and interests under them, are excepted in determining holding or control under AS 38.05.140. The commissioner may not reduce royalty on a lease or leases that are subject to a drilling or development contract except as provided in (j) of this section.

(u) To avoid waste or to promote conservation of natural resources, the commissioner may authorize the subsurface storage of oil or gas, whether or not produced from state land, in land leased or subject to lease under this section. This authorization may provide for the payment of a storage fee or rental on the stored oil or gas, or, instead of the fee or rental, for a royalty other than that prescribed in the lease when the stored oil or gas is produced in conjunction with oil or gas not previously produced. A lease on which storage is so authorized shall be extended at least for the period of storage and so long thereafter as oil or gas not previously produced is produced in paying quantities. Notwithstanding the authorization for payments under this subsection, when requested by a lessee, the commissioner shall exempt a gas storage facility that qualifies for a tax credit under AS 43.20.046 from any payment described in this subsection for the periods described in this subsection. The exemption is available for the calendar year in which the facility commences commercial operation and for each of the nine calendar years immediately following the first year of commercial operation; however, an exemption is not applicable for the calendar year after the facility ceases commercial operation or for any subsequent calendar year. The lessee shall provide the commissioner with any information the commissioner requests to determine if the exemption applies. The information related to state land leased for a gas storage facility under this subsection is public information and may be furnished to the Regulatory Commission of Alaska. On request, the commissioner shall provide the name of each person using state land leased for a gas storage facility under this chapter, the years for which an exemption was granted, and the amount of the exemption. Gas withdrawn from a gas storage facility regulated under AS 42.05 is considered to be non-native gas and is not considered to be produced and subject to royalty until all non-native gas injected into the gas storage facility has been withdrawn from the gas storage facility. A person receiving an exemption for a payment under this section that contracts to store gas for a utility regulated under AS 42.05 shall reduce the storage price to reflect the value of the exemption. In this subsection, "ceases commercial operation," "commences commercial operation," "gas storage facility," and "non-native gas" have the meanings given in AS 31.05.032.

(v) [Repealed, Sec. 36 ch 94 SLA 1980].

(w) Notwithstanding any other provisions of this section, land that was subject to a best interest finding issued within the previous 10 years may be, at the discretion of the commissioner, immediately offered for lease, under regulations adopted by the commissioner, upon terms appearing most advantageous to the state; however, noncompetitive leasing is prohibited. The commissioner shall establish a royalty determined to be in the public interest but not less than 12 1/2 percent. A lease must provide for payment to the state of rental but need not adhere to the rental schedule in (n) of this section nor to the 5,760-acres-per-lease limitation in (m) of this section. The lease term may not exceed 10 years, except as provided in (o) of this section.

(x) A lessee conducting or permitting any exploration for, or development or production of, oil or gas on state land shall provide the commissioner access to all noninterpretive data obtained from that lease and shall provide copies of that data, as the commissioner may request. The confidentiality provisions of AS 38.05.035 apply to the information obtained under this subsection.

(y) A noncompetitive lease existing at October 10, 1978, shall be extended for a period of two years and so long thereafter as oil and gas is produced in paying quantities. A noncompetitive lease extended under this subsection is subject to the regulations in force at the expiration of the initial five-year term of the lease. No extension may be granted, however, unless within a period of 90 days before the expiration date an application for extension is filed by the record title holder or an assignee whose assignment has been filed for approval, or an operator whose operating agreement has been filed for approval.

(z) No leases may be issued under this section without the inclusion of the following language: "The landowners' royalty share of the unit production allocated to each separately owned tract shall be regarded as royalty to be distributed to and among, or the proceeds of it paid to, the landowners, free and clear of all unit expense and free of any lien for it." Leases issued in violation of this subsection shall, for all purposes, be construed as containing the language required by this subsection.

(aa) Within 90 days after the written request of a lessee of a lease issued under this section or of a lessee of federal land from which the state is entitled under applicable federal law to receive a share of the royalty on gas production, the commissioner shall enter into an agreement with the lessee to use or accept, as the value of the state's royalty share of gas production, the price for the gas established in the contract between the lessee and a gas or electric utility sold by the lessee under the contract or the transfer price between the lessee and a gas or electric utility for a transfer by the lessee under an order establishing the transfer price

(1) but only if the primary function of the utility with which the lessee has entered into the contract or transfer is to provide, either directly or by selling at wholesale to another utility, gas or electricity to the general public, including residential consumers, within the utilities' service areas, and the utility with which the lessee has entered into

(A) the contract is not an affiliated interest, as that term is defined in AS 42.05.990, with the lessee or with a subsequent purchaser of more than 10 percent of the utility's gas or electricity; or

(B) the transfer is an affiliated interest, as that term is defined in AS 42.05.990, and the transfer price between the lessee and the utility is established by an order of the Regulatory Commission of Alaska; and

(2) unless the commissioner makes a written finding, based on clear and convincing evidence, that

(A) the contract price or transfer price is unreasonably low;

(B) the prospective reduction in royalty receipts would not be balanced by increased benefits to in-state gas and electric consumers;

(C) the lessee and the utility are related in management, ownership, or other aspect and, in the case of a transfer price, that relationship is not regulated under AS 42.05; and

(D) the contract price or transfer price is not in the best interest of the state.

(bb) In (aa) and (ee) of this section,

(1) "gas or electric utility" includes an electric cooperative organized under AS 10.25, a municipal utility, and a gas or electric utility regulated under AS 42.05; provided that, if the contract gas is transmitted to consumers through a pipeline and the gas utility either owns the pipeline or is related in ownership to the owner of the pipeline, then the gas utility qualifies as a "gas or electric utility" within the meaning of this paragraph only if it is bound or agrees to be bound by the covenants set out in AS 38.35.120;

(2) "manufacturer of agricultural chemicals" means a person that is a business entity primarily engaging in the manufacturing of nitrogenous and phosphatic based fertilizers, mixed fertilizers, pesticides, and similar chemicals for agricultural purposes;

(3) "price for the gas established in the contract" includes tax reimbursement amounts, deliverability and other charges, and other forms of consideration paid by the gas or electric utility or by the manufacturer of agricultural chemicals, as appropriate, under the contract;

(4) "state's royalty share of gas production"

(A) includes payments on federal leases made to the state under 30 U.S.C. 191;

(B) does not include the state's royalty share of gas production from land patented to the state under

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

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

(iii) 43 U.S.C. 1635 in settlement of the claims of the state under 38 Stat. 1214.

(cc) The provisions of (aa) and (ee) of this section do not prohibit the commissioner from accepting any payment on a federal lease tendered by the federal agency responsible for determination and transmittal of the payment to the state under 30 U.S.C. 191 or otherwise due the state as the state's royalty share of gas production irrespective of the state's acceptance of an amount that is different than the amount due under the lease for purposes of determining royalty share on gas production under that subsection.

(dd) A lessee is eligible for the royalty in (f)(5) of this section only if production of oil or gas for sale begins from the eligible field before January 1, 2004. However, if the state or an agency of the state is a party to a suit, other than a suit brought by the lessee or agent of the lessee, and if the suit challenges (f)(5) of this section or AS 31.05.030(i) or an act under (f)(5) of this section or AS 31.05.030(i), the January 1, 2004, deadline is extended by the number of days the state or agency of the state is a party to the suit, including any appeals.

(ee) For a contract that is entered into on or after September 9, 2003, within 90 days after the written request of a lessee of a lease issued under this section or of a lessee of federal land from which the state is entitled under applicable federal law to receive a share of the royalty on gas production, in order to establish the value of the state's royalty share of gas production sold by the lessee under the contract, the commissioner may enter into an agreement with the lessee to use or accept as a price for the gas an amount that is not less than the price established in the contract between the lessee and a manufacturer of agricultural chemicals, not to exceed the amount that would otherwise be due under the lease. The commissioner may enter into the agreement if it is in the best interest of the state

(1) only if the primary function of the manufacturer is to engage in the production of a value-added product, and the manufacturer with which the lessee has entered into the contract is not affiliated with the lessee or with a subsequent purchaser of more than 10 percent of the manufacturer's value-added product; for purposes of this paragraph, the parties to a contract or purchase are affiliated if, in the judgment of the commissioner, one of the parties to the contract or purchase exercises substantial influence over the policies and actions of the other as evidenced by relationship based on common ownership or family interest or by action taken in concert without regard to whether that influence is based upon stockholdings, stockholders, officers, or directors;

(2) unless the commissioner makes a written finding, based on clear and convincing evidence, that

(A) the contract price is unreasonably low; or

(B) the prospective reduction in royalty receipts would not be balanced by employment opportunities or other tangible benefits to the state.

(ff) The provisions of this section that authorize oil and gas leases also apply to authorize the commissioner to issue leases for the production of gas only, subject to the following:

(1) in authorizing and managing leases under this subsection, the terms "oil and gas" or "oil or gas" as they are used in this chapter may be read and applied as appropriate as referring to gas only;

(2) when a lease is authorized as a gas only lease, the lease does not give the lessee the right to produce oil; if a well drilling for gas under a gas only lease authorized by this subsection penetrates a formation capable of producing oil, the owner or operator

(A) shall notify the department and the Alaska Oil and Gas Conservation Commission; and

(B) may not conduct further operations in the drilled well until the facility complies with all applicable laws and regulations relating to oil and gas exploration and production; however, this subparagraph does not prevent the owner or operator from conducting activities that may be required by the Alaska Oil and Gas Conservation Commission to plug, plug-back, or abandon a well;

(3) the provisions of this subsection do not apply to authorize a lease for the recovery of nonconventional gas on land that is held under an existing coal lease entered into under AS 38.05.150 that has an active permit for exploration or mining unless the lessee under this subsection is also the lessee under AS 38.05.150 of that land.

(gg) For an activity or operation related to the extraction of coal bed methane,

(1) for which the department by regulation requires submission and approval of a plan of operations before activities or operations may be undertaken, the director shall, as a condition for determining a bond requested under AS 38.05.130, after notice and an opportunity to be heard, review the plan of operations to determine if use of the owner's land is reasonably necessary to extract the coal bed methane; a bond determined under AS 38.05.130 and this paragraph may, at the discretion of the director, be imposed against a statewide bond that has been posted by the person initiating the request for determination of the bond if the statewide bond remains in effect, and an additional bond is not required;

(2) before approving operations for the development of coal bed methane under AS 38.05.134, 38.05.177, or this section, the director shall ensure that the approval is conditioned upon reasonable and appropriate

(A) setbacks governing the placement by the operator of compressor stations; setbacks approved under this subparagraph must be determined with reference to the population density and general character of the parcels surrounding the proposed compressor station site; and

(B) measures to mitigate the noise of compressors, engines, and other noise generating equipment operated by the operator on the lease or license; measures approved under this subparagraph must be determined with reference to the population density and general character of the parcels surrounding the proposed compressor, engine, or other noise-generating equipment.