Notes to reader:

1. Except as discussed in note 2, proposed new text that amends an existing regulation is **bolded and underlined**.

2. If the lead-in line states that a new section, subsection, paragraph, subparagraph, or clause is being added, or that an existing section, subsection, etc. is being repealed and readopted (replaced), the new (or replaced) text is not bolded or underlined.

3. [ALL-CAPS TEXT WITHIN BRACKETS] indicates text that is proposed to be deleted.

4. When the word "including" is used, Alaska Statutes provide that it means "including, but not limited to."

11 AAC 05.010(a)(5) is amended by adding a new subparagraph to read:

(H) application for issuance of land use permit, required under 11 AAC 59.050, for wind power project evaluation and other resource and environmental studies related to use of state land for a wind power project, $100.

11 AAC 05.010(a)(6) is amended by adding a new subparagraph to read:

(N) application for issuance of a lease, required under 11 AAC 59.100, of state land to be used for construction and operation of a wind power project, $100.

11 AAC 05.010 is amended to read:

11 AAC 05.010(a).

(8)(P)(i) $3 per acre-foot per year for any appropriation of a significant amount of water up to 5,000 acre-feet, or for any other significant amount of water, as defined in [11 AAC 93.970] **11 AAC.93.035(a)**, with a minimum fee of $ 50;

11 AAC 05.010(e)(5) is amended to read:

(5) land use permit under AS 38.05.850 for commercial use of a structure or facility not covered by (3) of this subsection, such as a commercial mooring buoy, fish holding pen, log storage, A-frame logging, [OR] equipment staging area for a construction project, **or wind power project evaluation,** an annual fee of $250 for the first acre, plus $100 for each additional acre;

11 AAC 05.010 is amended to read:

11 AAC 05.010(a).

(8)(P)(i) $3 per acre-foot per year for any appropriation of a significant amount of water up to 5,000 acre-feet, or for any other significant amount of water, as defined in [11 AAC 93.970] **11 AAC.93.035(a)**, with a minimum fee of $ 50;

11 AAC 05.010(e) is amended by adding a new paragraph to read:

(23) lease of state land for a wind power project under 11 AAC 59:

(A) a one-time administrative fee of $1,500 per megawatt of the approved capacity, to be paid when the department issues an early entry authorization for the site;

(B) an annual rental charge that is the greater of $1000 or 10% of the land's appraised fair market value; the annual rental charge will be subject to adjustment every five years from the date of the lease approval decision.

(Eff. 1/1/86, Register 96; am 8/10/86, Register 99; am 9/28/86, Register 99; am 8/23/87, Register 103; am 1/28/88, Register 105; am 7/1/89, Register 110; addt'l am 7/1/89, Register 110; am 8/16/89, Register 111; am 12/9/89, Register 112; am 1/17/90, Register 113; am 3/16/91, Register 117; am 12/25/91, Register 120; am 5/14/92, Register 122; am 9/16/92, Register 123; am 4/18/93, Register 126; am 5/5/93, Register 126; am 10/1/94, Register 131; am 12/13/95, Register 136; am 2/16/96, Register 137; am 5/24/96, Register 138; am 5/18/97, Register 142; am 2/21/98, Register 145; am 7/29/98, Register 147; am 8/26/98, Register 147; am 9/10/98, Register 147; am 1/29/99, Register 149; am 5/9/99, Register 150; am 2/9/2001, Register 157; am 5/3/2001, Register 158; am 8/23/2001, Register 159; am 10/27/2002, Register 164; am 11/13/2002, Register 164; am 12/7/2002, Register 164; am 1/14/2004, Register 169; am 10/2/2004, Register 171; am 1/16/2005, Register 173; am 9/10/2005, Register 175; am 2/15/2006, Register 177; am 3/13/2006, Register 177; am 11/22/2006, Register 180; am 8/31/2008, Register 187; am 12/14/2008, Register 188; am 8/19/2009, Register 191; am 12/5/2009, Register 192; **am / / , Register**)

Authority:	AS 27.21.030	**AS 38.05.560**	AS 40.25.110
	AS 27.21.940	**AS 38.05.565**	AS 41.06.020
	AS 38.04.045	AS 38.05.600	AS 41.21.020
	AS 38.04.900	AS 38.05.850	AS 41.21.026
	AS 38.05.020	AS 38.08.110	AS 41.23.440
	AS 38.05.035	AS 38.09.020	AS 44.37.020
	AS 38.05.057	AS 38.09.110	AS 44.37.025
	AS 38.05.082	AS 38.35.020	AS 44.37.027
	AS 38.05.177	AS 38.35.050	AS 45.29.525

AS 38.05.180	AS 38.50.160	AS 45.50.315
AS 38.05.255	AS 38.95.240	AS 46.15.020
AS 38.05.295	AS 40.15.370	AS 46.15.035
AS 38.05.550	AS 40.17.030	AS 46.15.037
AS 38.05.555		

Title 11 is amended by adding a new chapter to read:

Chapter 59. Use of State Lands for Wind Power Generation

Article

1. Applicability and Purpose (11 AAC 59.010 - 11 AAC 59.020)
2. Land Use Permit for Wind Power Project Evaluation (11 AAC 59.050 - 11 AAC 59.090)
3. Lease of State Land for Wind Power Project (11 AAC 59.100 - 11 AAC 59.200)
4. General Provisions (11 AAC 59.210 - 11 AAC 59.290)

Article 1. Applicability and Purpose

Section

010. Applicability
020. Limitations on use

11 AAC 59.010. Applicability. (a) This chapter applies to any use of state land under the department's management authority for the purpose of wind power project evaluation and wind power project operations, including

(1) study and collection of data on wind power potential, and other resource and environmental studies related to use of the land for wind power generation; and

(2) development and operation of a wind power project.

(b) The intent of this chapter is to promote and manage the development of wind power operations on state land where prudent and feasible, making the requirements and process clear to potential developers, reducing cost of power to Alaskans, helping to fulfill the goal of more renewable energy in the state's power portfolio, and assisting utilities and power cooperatives with reduced fees, while providing a reasonable return to the state for the use of its resources.

(c) Unless a provision of this chapter states otherwise, the provisions of 11 AAC 58 and 11 AAC 67 apply to

(1) an application for a lease under this chapter;

(2) an early entry authorization; and

(3) a wind power project lease. Eff. __/___/_____, Register __)

Authority: AS 38.05.020 AS 38.05.073 AS 38.05.810
AS 38.05.035 AS 38.05.075 AS 38.05.850
AS 38.05.070 AS 38.05.080

11 AC 59.020. Limitations on use. A land use permit issued under this chapter may be granted for the purpose of evaluating wind power potential on the site, and conducting related resource and environmental studies. Any lease issued under this chapter is granted for the purpose of developing and operating a wind power project. The department has the right to inspect and order removal of materials, equipment, facilities, and other personal or real property not authorized by permit or lease. Failure of a permittee or a lessee to remove unauthorized materials, equipment, facilities, and other personal or real property is grounds for termination of the permit or lease. (Eff. __/___/_____, Register __)

Authority: AS 38.05.020 AS 38.05.073 AS 38.05.810
AS 38.05.035 AS 38.05.075 AS 38.05.850
AS 38.05.070 AS 38.05.080

Article 2. Land Use Permit for Wind Power Project Evaluation

Section

040. Land use permit required for wind power project evaluation

050. Permit to be nonexclusive

060. Application for wind power project evaluation permit

070. Solicitation of competitive interest

080. Conditions of permit

090. Data to be collected; use and confidentiality

11 AAC 59.040. Land use permit required for wind power project evaluation. (a) A person seeking to use state land to gather data or conduct research regarding wind power project potential, or to conduct environmental or resource evaluation or assessment activities related to potential use of the land for development, construction, and operation of a wind power project shall first obtain a land use permit to conduct research activities that do not fall within the generally allowed uses set out in 11 AAC 96.020.

(b) Except as otherwise provided in 11 AAC 59.040 – 11 AAC 59.090, a land use permit issued under this section is subject to the applicable provisions of 11 AAC 96. Nothing

in this section relieves any person from the obligation to comply with other laws and regulations of any federal, state, or local government agency. (Eff. __/___/_____, Register __)

Authority: AS 38.05.020 AS 38.05.073 AS 38.05.810
AS 38.05.035 AS 38.05.075 AS 38.05.850
AS 38.05.070 AS 38.05.080

11 AAC 59.050. Permit to be nonexclusive. (a) A wind power land use permit granted under this chapter is not exclusive, and does not give the permittee any expectation or preference for obtaining a lease of any area or resource studied under the permit.

(b) If necessary to accommodate a new applicant for a land use permit under this chapter, the director may modify an existing permit by imposing additional, reasonable conditions that do not restrict any ongoing operations of the permittee. If an existing permittee contends that any modification of its land use permit under this section interferes with its ongoing operations, the permittee may appeal the modification under 11 AAC 02. (Eff. __/___/_____, Register __)

Authority: AS 38.05.020 AS 38.05.073 AS 38.05.810
AS 38.05.035 AS 38.05.075 AS 38.05.850
AS 38.05.070 AS 38.05.080

11 AAC 59.060. Application for wind power project evaluation permit. (a) An applicant for a land use permit for wind power project evaluation and all related activities including installation of research equipment, construction of temporary structures, and construction and use of access roads and other necessary incidental facilities, must

(1) complete an application on a form the department prescribes; and

(2) file the application and the application fee prescribed by 11 AAC 05.010(a)(5)(H) by methods listed on the application form to one of the department's addresses listed on the application form.

(b) An application for a wind power project evaluation permit must:

(1) describe the land the applicant seeks to use by

(A) the land's legal description or other identification acceptable to the department;

(B) the total area being applied for; and

(C) a map at a scale of 1:6,000 or larger on which the requested permit area is clearly marked;

(2) identify any known existing uses of the land;

(3) explain the applicant's data gathering plan, including the type of research to be conducted, and the intended length of the study or studies;

(4) describe the equipment, structures or other items of any kind the applicant intends to place on the land, and state how long each item will remain on the permit site for longer than day use;

(5) describe any uses exceeding those described as generally allowed in 11 AAC 96.020; and

(6) explain how the applicant intends to gain access to the requested permit area including any road or landing facility to be constructed, any use of a right of way, or any easement necessary to gain access and the type of vehicles to be used to access the site.

(Eff. __/___/_____, Register __)

Authority:	AS 38.05.020	AS 38.05.073	AS 38.05.810
	AS 38.05.035	AS 38.05.075	AS 38.05.850
	AS 38.05.070	AS 38.05.080	

11 AAC 59.070. Solicitation of permits (a) When the department receives a complete application for a wind power project evaluation permit under 11 AAC 59.060, the department will give notice on the Alaska Online Public Notice System to inform the public and industry of the permit application, and will solicit a permit application from any other person interested in an opportunity to lease the site or gather data for a wind power project. The notice will explain that

(1) the permit applicant intends to begin gathering data that may (or "with the intent to") make it a qualified applicant under 11 AAC 59.110 for a lease of the approximate site identified in the application;

(2) the department may offer the site identified in the application for a competitive lease for a wind power project in the future; and

(3) any person interested in a lease of the site for a wind power project must collect or obtain the meteorological data listed in 11 AAC 59.090 at the site in order to become a qualified applicant under 11 AAC 59.110(b) to participate in a competitive leasing process.

(b) The notice given under this section will also specify the deadline for any person to submit a complete permit application under 11 AAC 59.050 for a wind power project evaluation permit at the identified site. The department will not accept an application for a wind power project evaluation permit on the site for three years after the deadline for a permit application specified in the notice given under (a) of this section or until the all existing wind power project evaluation permit(s) have been closed or expired, whichever is later. (Eff. __/___/_____, Register __)

11 AAC 59.080. Conditions of permit. (a) If the department finds it is in the best interests of the state, the department may grant a wind power project evaluation permit for a term of up to three years subject to conditions the department finds necessary, including the terms and conditions set out in 11 AAC 96.040-11 AAC 96.145, and the following:

(1) authorized structures and uses;

(2) annual rental charge as provided in 11 AAC 05.010(e)(5); and

(3) conditions of use to accommodate any other authorized uses in the same area.

(b) The department may extend a permit issued under 11 AAC 59.070 and (a) of this section for up to one additional year if the department finds that compliance with the purpose or conditions of the permit was prevented by reasons of force majeure.

(c) The permittee must complete and submit to the department an annual report that includes:

(1) the type, number, and location of all measuring or monitoring devices;

(2) the type of data being gathered; and

(3) the progress being made by the permittee to gather the data required under 11 AAC 59.090.

(d) A permit issued under this section is non-exclusive and may be revoked at will by the department. (Eff. __/___/_____, Register __)

Authority:	AS 38.05.020	AS 38.05.073	AS 38.05.810
	AS 38.05.035	AS 38.05.075	AS 38.05.850
	AS 38.05.070	AS 38.05.080	

11 AAC 59.090. Data to be collected; use and confidentiality. (a) To satisfy the requirements of 11 AAC 59.110 and 11 AAC 59.120, a wind power project evaluation permittee must collect data required for all state and federal authorizations required for a wind power project, including meteorologic information, and resource and environmental studies. At a minimum, an acceptable data collection sufficient to satisfy the requirements of 11 AAC 59.110 will cover a period of time of no less than two consecutive calendar years for each proposed lease site, and will include

(1) wind speeds, direction, wind density, wind frequency, average temperatures, snow depths;

(2) migratory bird and mammal use, and any other species' use the department determines necessary review by the Alaska Department of Fish and Game or with United States Fish and Wildlife Service;

(3) aviation clearance;

(4) soil and wetlands assessment;

(5) material and water source assessment if onsite material or water is needed for future construction;

(6) access routes for construction and maintenance;

(7) visual impact;

(8) navigational impact of any offshore wind turbines; and

(9) other information the department determines necessary.

(b) A permittee under this article shall make all collected data available for review at the department's request at any reasonable time. Within 30 days of the conclusion of the permit term, the permittee shall submit all collected data to the department.

(c) A permittee may file a written request to the department to hold geological, geophysical, and engineering data submitted to the department under this chapter confidential as allowed under AS 38.05.035(a)(8). Meteorologic information is considered geophysical data. Data that will be used to design the construction plans is considered engineering data. Any data that is held confidential will only be held confidential for three consecutive calendar years from date of initial submission; after three years, the data will be available to the public.

(d) The department may share any data submitted under this section with other agencies that agree to keep confidential any information the department holds as confidential. (Eff. __/___/_____, Register __)

Authority:	AS 38.05.020	AS 38.05.073	AS 38.05.810
	AS 38.05.035	AS 38.05.075	AS 38.05.850
	AS 38.05.070	AS 38.05.080	

Article 3. Lease of state land for wind power project

Section

100. Lease of state land for wind power project

110. Applicant qualifications

120. Application for lease

130. Competitive lease process

140. Direct negotiation

150. Early entry authorization

160. Term of lease

170. Conditions of lease

180. Lease Utilization

190. Lease Expiration

200. Re-Lease of wind power project site

11 AAC 59.100. Lease of state land for wind power project. (a) A qualified person seeking to use state land to develop, construct, or operate a wind power project must apply for a

lease of state land in compliance with this chapter and applicable provisions of 11 AAC 58 and 11 AAC 67. Unless the lease specifically allows another use, a lease issued under this section can only be used for the purpose of development, construction, and operation of a wind power project.

(b)If the department receives a complete application from a licensed public utility for a lease of state land for a wind power project, and the department determines that it is in the state's best interest to negotiate directly, the department may commence direct negotiations with the applicant under 11 AAC 59.140.

(c) If the department receives a complete application from a qualified person other than a licensed public utility for a lease of state land for a wind power project with an estimated transaction value of any value, the department will initiate a competitive process under 11 AAC 59.130 unless exempted under 11 AAC 59.140. If, after public notice soliciting interest issued under 11 AAC 59.070, no qualified person submits a complete competing lease application or notification of interest under AS 38.05.070, the department may commence non-competitive negotiations with the applicant under 11 AAC 59.140.

(d) When the department issues a final decision under AS 38.05.035 to approve a lease of state land for a wind power project, the department may issue an early entry authorization as provided in 11AAC 59.150 to allow construction of the facility before the department issues the lease.

(e) When the approved lessee completes all requirements of the final decision approving the lease and the early entry authorization to the department's satisfaction, the department will issue a wind power project lease setting out terms and conditions of the lease

for use of the state land for operation of the wind power project for the remaining term of the lease.

(f) The lease may include provisions for all wind power project facilities, including any tower, access facility, structure necessary to maintain and operate the facility, and any connecting power corridor. The department may issue a separate easement or right(s)-of-way as the department considers appropriate for access roads or transmission lines. (Eff. __/___/_____, Register __)

Authority: AS 38.05.020 AS 38.05.073 AS 38.05.080
AS 38.05.035 AS 38.05.075 AS 38.05.810
AS 38.05.070

11 AAC 59.110. Applicant qualifications. (a) A person applying for a lease of state land for a wind power project under this chapter must be an entity qualified to do business in Alaska, including

(1) a natural person who has reached the age of majority;

(2) a corporation incorporated in the State of Alaska or authorized to do business in the State of Alaska under AS 10.06.705;

(3) a licensed public utility;

(4) an agency of the United States, a municipality or other subdivision of the State of Alaska; or

(5) a partnership, joint venture; or limited liability company, either organized in Alaska or registered to conduct business in Alaska under AS 10.50.605, whose partners, joint

venturers, or members, respectively, consist of any combination of persons under (a)(1) – (4) of this section.

(b) Except when the department offers an existing wind power project site for re-lease under 11 AAC 59.190, a person applying for a lease of state land for a wind power project must have collected and submitted to the department the meteorological data required under 11 AAC 59.090 at the site covered in the application, or must certify that it has obtained that data from another source. The collected data must demonstrate that the site experiences wind patterns capable of justifying a wind power project by demonstrating that the site experiences wind patterns capable of justifying a wind power project, with a wind power density of greater than 300 Watts/meter^2 at 50 meter height.

(c) A person applying for a lease must show that it is a utility, or that it has entered into negotiations with a utility or other power purchaser to sell power produced from a wind power project. Before a decision to grant a lease can be issued by the department an applicant other than a utility must have entered into a contract to sell power to a utility or other power purchaser of a term and duration acceptable to the department. (Eff. __/___/_____, Register __)

Authority: AS 38.05.020 AS 38.05.073 AS 38.05.080
AS 38.05.035 AS 38.05.075 AS 38.05.810
AS 38.05.070

11 AAC 59.120. Application for lease. (a) An applicant for a lease of state land for a wind power project must

(1) complete an application on a form the department prescribes; and

(2) file the application and the application fee prescribed by 11 AAC 05.010(a)(6)(N) by mail or hand delivery to one of the department's addresses listed on the application form.

(b) An application for a lease of state land for a wind power project must:

(1) show that the applicant is qualified as provided in 11 AAC 59.110(b) by having collected and provided to the department the site specific data listed in 11 AAC 59.090; however, this requirement does not apply to an application for a re-lease of an existing wind power project lease under 11 AAC 59.190;

(2) include a development plan that describes

(A) the number, height, and location of each wind tower and ancillary structure such as a building, road, and transmission line to be placed on the leased premises;

(B) the type of construction;

(C) the date construction will begin and estimated date of completion;

(D) the type and size of each wind turbine, and the total installed capacity (Kilowatt or Megawatt), the expected capacity factor (percentage), the expected annual generation capacity (Kilowatt hour or Megawatt hour) and the expected wind generation value; and

(E) other associated land uses including:

(i) if wind power project on the leased land requires any separate right-of-way or easement under AS 38.05.850 for site access or transmission of power to a power grid, include a complete application for each right-of-way or easement requested; or

(ii) if the applicant wants to restrict any use of lands adjacent to the lease that could potentially obstruct wind flow, delineate that area and explain the potential for obstruction; the department will determine whether it is in the state's best interests to provide this protection, the appropriate authorization to use, and the cost of that encumbrance to the lessee.

(c) The department may require an applicant for a lease of state land for a wind power project to provide any additional information the department considers necessary to determine whether

(1) the applicant is qualified; and

(2) the lease is in the best interests of the state.

(d) If the application is complete and the applicant demonstrates to the satisfaction of the department that it is qualified to obtain a lease under this chapter, the department will determine, under the standards of AS 38.05.070 and this chapter, whether the lease should be offered competitively, as set out in 11 AAC 59.130, or by direct negotiation as set out in 11 AAC 59.140.

(e) The filing of an application does not give the applicant any right to a lease or the use of the land applied for pending the issuance of the lease. (Eff. __/___/_____, Register __)

Authority: AS 38.05.020 AS 38.05.073 AS 38.05.080
AS 38.05.035 AS 38.05.075 AS 38.05.810
AS 38.05.070

11 AAC 59.130. Competitive lease process. (a) Except as provided in 11 AAC 59.140 and 11 AAC 59.190, state land with potential for a wind power project will be leased either by public auction or sealed bid at the discretion of the department. The auction procedures of AS 38.05.075 and 11 AAC 67.045 are applicable to this section.

(b) To participate in a competitive auction under this section, a person must submit a complete application as provided in 11 AAC 59.100 and be qualified as provided in 11 AAC 59.110. The department will determine if an applicant is qualified as provided in AS 38.05.070 and 11 AAC 59.110.

(c) When the department receives a complete application in compliance with 11 AAC 59.120 for a lease of state land for a wind power project, the department will give notice under AS 38.05.945 to inform the public and industry of the lease application, and will solicit an expression of interest from any other qualified person interested in leasing the site for a wind power project. The notice will explain that

(1) the department has received an application to lease state land for a wind power project, and will identify the site listed in the application;

(2) the department will conduct a competitive lease process in compliance with this section and AS 38.05.075 if the department receives an expression of interest in leasing the site from any other person who is a qualified applicant as provided in 11 AAC 59.110 and 11 AAC 58; and

(3) the applicant must submit an expression of interest to the department in the manner and by the deadline stated in the notice.

(d) The department will determine the successful bidder for the lease using one or more of the following bidding variables, submitted as part of the bid, that the department determines provide the best combination of return to the state, power customers, affected communities, or efficient use of the leased land:

(1) the amount of power proposed to be generated from the site;

(2) the total generation capacity based on the expected life of turbines and expected annual percentage of time producing power;

(3) the date by which the project is expected to be operational;

(4) the return to the state, with bonus bids allowed, and

(5) any measurable benefits to the local community and power customers. (Eff. __/___/_____, Register __)

Authority: AS 38.05.020 AS 38.05.073 AS 38.05.080
AS 38.05.035 AS 38.05.075 AS 38.05.810
AS 38.05.070

11 AAC 59.140. Non-competitive lease process. (a) The department may negotiate directly with a person for a lease of state land for a wind power project instead of using a competitive process under 11 AAC 59.130 when the department determines that:

(1) no person other than the applicant is qualified for the lease because no other

person has expressed interest in response to the department's solicitation of competition under 11 AAC 59.130, or meets the qualifications of 11 AAC 59.110(b) for a lease at the site; or

(2) the applicant is a licensed public utility, and the department determines, in compliance with AS 38.05.810(e), that it is in the state's best interest to negotiate directly.

(b) If the department determines that a lease of state land for wind power generation should be offered non-competitively, the department will inform the interested party of the terms and conditions, including the compensation method and the minimum rental charges that the department proposes for the lease. (Eff. __/___/_____, Register __)

Authority: AS 38.05.020 AS 38.05.073 AS 38.05.080
AS 38.05.035 AS 38.05.075 AS 38.05.810
AS 38.05.070

11 AAC 59.150. Early entry authorization. (a) When the department issues a decision under AS 38.05.035(e) approving a lease of state land for a wind power project specifying the approved number of turbines and operation design capacity, the department may issue an early entry authorization granting the approved applicant a right to enter the state land to construct the project, subject to conditions set out in the early entry authorization. The early entry authorization will impose conditions the department considers appropriate, including a timeline to build wind generation turbines and make them operational. When necessary for construction, the area of land granted in the early entry authorization may be larger than, or different from, the area authorized in the lease for the wind power project.

(b) The department may grant an early entry authorization for an initial term up to two years, and may renew the early entry authorization once for an additional term up to two years if the department determines it is in the state's best interest. The early entry authorization will expire at the end of the term of the early entry authorization or upon issuance of the lease whichever is earlier. During the term of the early entry authorization, the approved lease applicant shall

(1) conduct an as-built survey of the approved lease area and facilities acceptable to the department;

(2) submit an appraisal of the approved lease area acceptable to the department as required under AS 38.05.840;

(3) unless the lessee is a licensed public utility, enter into a power sales agreement with a licensed public utility or other power purchaser; and

(4) reclaim and rehabilitate any area of the early entry authorization that will not be included in the lease.

(c) During an early entry period before the department issues the final lease, the approved lessee shall pay a rental charge based on the department's estimate of the land value as provided in 11 AAC 05.010(e)(23). When the approved lessee submits an appraisal of the land value satisfactory to the department, rental charges based on the estimated land value, including those already paid during the early entry authorization period, will be adjusted to the value shown by the appraisal.

(d) In addition to the rental charge due under (c) of this section, an approved lessee that does not put the approved turbines into operation up to design capacity within three calendar years of the date of the lease authorization decision, shall be charged an annual fee of $3,000 per megawatt of approved generation capacity for each megawatt not in operation until the lessee puts the approved turbines into operation; this fee is due annually on the anniversary date of the lease authorization decision; when the approved generation capacity for each megawatt is placed in operation between anniversary dates, the fee will be prorated on a monthly basis.

(e) An early entry authorization shall provide that the department may, after notice under 11 AAC 58.570 and a 30 day opportunity to cure any deficiency, cancel or revoke the early entry authorization, and order the approved applicant to cease all activity on the approved lease site, if the applicant fails to comply with material conditions of the authorization. To cancel any authorization, the department shall comply with 11 AAC 58. Material conditions of an early entry authorization include

(1) obtaining a bond, survey, appraisal, or other requirement;

(2) making substantial progress in construction of any required wind power turbine or facility as determined by the department; and

(3) entry into a power sales agreement with a licensed utility or other power purchaser.

(g) If the approved lease applicant fails to satisfy the department with material conditions of an early entry authorization before the end of the term of the early entry authorization, the department may revoke the decision to authorize the lease. (Eff. __/__/_____, Register __)

Authority: AS 38.05.020 AS 38.05.073 AS 38.05.080
AS 38.05.035 AS 38.05.075 AS 38.05.810
AS 38.05.070

11 AAC 59.160. Term of lease. (a) The department will establish the term of the lease, not to exceed 25 years, based on the factors the department finds relevant, including the useful life of improvements the lessee will construct on the land, and the period necessary to amortize the lessee's investment. The term of the lease begins on the effective date of the lease approval decision under AS 38.05.035(e), and the lease expiration date is calculated from that date. The term of a lease includes time the approved lessee occupies the approved lease site under an early entry authorization issued under 11 AAC 59.150.

(b) The department may renew a lease in good standing for one additional term not to exceed the initial lease term. At the end of the initial lease term, or the renewal term, if applicable, the department may re-lease the land competitively as provided in 11 AAC 59.190. The provisions of AS 38.05.102 shall not be applied to a lease issued under this chapter.

(Eff. __/___/_____, Register __)

Authority: AS 38.05.020 AS 38.05.073 AS 38.05.102
AS 38.05.035 AS 38.05.075 AS 38.05.810
AS 38.05.070 AS 38.05.080

11 AAC 59. 170. Conditions of lease (a) A lease issued under this chapter will include conditions set out in this section and other conditions the department determines necessary to

(1) assure compliance with the lease issuance decision, AS 38.05, and this chapter:

(2) minimize environmental impacts and conflicts with other uses; and

(3) to protect the best interests of the state.

(b) The lease shall specify the approved number of turbines and operation design capacity as well as the date by which the approved capacity must be operational and power is to be produced and distributed.

(c) The lessee shall pay an annual rental charge as provided in 11 AAC 05.010(e)(23). The first annual rental payment is due when the department issues the final lease. Subsequent annual payments are due on each yearly anniversary of the due date of the first annual rental payment. When the appraisal is complete, the rental charge will be adjusted for the term from the effective date of the decision.

(d) Before the department issues the final lease, the approved applicant shall submit a bond, acceptable to the department, conditioned on faithful compliance with all provisions of the lease. The bond will be in an amount the department determines is sufficient to cover costs of dismantlement and removal of any facilities on the leased land, and any necessary remediation and reclamation to restore the site to a clean and acceptable condition. The bond will be on a form provided by the department, and will be

(1) a corporate surety bond with a corporate surety qualified to do business in Alaska; or

(2) a personal bond accompanied by a deposit of cash, or of negotiable securities accompanied by a document giving the commissioner full authority to sell the securities in the event the lessee defaults on any condition of the lease; or

(3) another option the department determines, in writing, is acceptable.

(e) The lessee must complete and submit an annual report to the department that includes:

1) a financial statement showing any fee reduction to power customers that can be directly attributable to the wind power project during the annual period;

2) the percentage of time the facility was operational during the year;

3) the amount of power produced by the facility; and

4) any accidents, spills, or injuries that occurred on the leased premises, or on any state-owned lands utilized by the lessee either with or without an authorization.

(f) The lease may require the lessee or operator to submit operations and maintenance plans.

(g) A lease issued under this chapter may not be assigned or sublet without previous written approval from the department. The department shall restrict assignment of the lease to an entity that qualifies for a land lease. If the lease was issued without competition, the department may restrict assignment of the lease to an entity that qualifies for a non-competitive lease. The department shall charge any appropriate assignment or sublease fees it deems appropriate under AS 38.05.073(m), AS 38.05.075(f), and AS 38.05.095.

(h) The lease must describe the lessee's form of access to the leased site. Access roads and transmission lines may be included in the area of the lease. The department may limit or restrict the access to the lease.

(i) The lease will allow for other compatible uses of land as prescribed in the final lease decision under AS 38.05.035(e).

(j) The lease will require the lessee to cooperate with the department to assure an orderly process for the potential transfer of the site and wind power project facilities to any other person that the department determines to be the future lessee as provided in 11 AAC 59.190. Unless the site, structures, and other materials are transferred to another lessee, the lessee will be required to remove all structures and other materials from the site at the end of the lease term.

(k) A lessee may apply for a repowering amendment to increase the power output of the turbines on the lease site without increasing the size of the leased area. A repowering amendment will not extend the duration of an existing lease. If the department approves a repowering amendment, the department may modify the terms of the lease including

(1) a charge of a new one time installment fee under 11 AAC 05.010(e)(23)(B), and

(2) other appropriate conditions to reflect the new power capacity of the repowered facilities;

(l) The department may revise the conditions of a lease

(1) at the time of renewal under 11 AAC 59.160(b);

(2) at the time the lease is repowered under (k) of this section;

(3) to appropriately incorporate changes in state law or regulation; or

(4) when the department and the lessee agree to revise the conditions of the lease. (Eff. __/___/_____, Register __)

Authority:	AS 38.05.020	AS 38.05.073	AS 38.05.080
	AS 38.05.035	AS 38.05.075	AS 38.05.810
	AS 38.05.070	AS 38.05.095	

11 AAC 59.180. Lease utilization (a) Leases issued under this chapter must be utilized for the purposes within the scope of the lease. Utilization or development for other than the allowed uses is a violation of the lease. Failure to make substantial use of the land for a wind power project or substantially maintain wind power production, consistent with the development plan approved by the department under 11 AAC 59.120, will, in the director's discretion, constitute grounds for cancellation of the lease.

11 AAC 59.190. Lease Expiration. (a) No later than two years before the expiration of a lease of state land for a wind power project, the lessee shall inform the department in writing of its decision to:

(1) file an application for a new lease for the site with the intent to continue the site use for a wind power project;

(2) commit to remove all facilities and equipment from the leased state land and rehabilitate the lease site to a condition acceptable to the department by the expiration of the lease; or

(3) agree to sell the facilities and equipment located on the lease to the state or a new lessee, if the lessee has no interest in a new lease.

(b) If the lessee elects either (a)(1) or (a)(3) of this section, no later than one year before the expiration of the lease, the lessee shall provide to the department at the lessee's expense an appraisal, acceptable to the department, that determines the current fair market value of all improvements, facilities, and equipment located on the lease site. The lessee must agree to sell all improvements, facilities, and equipment located on the lease site to any future lessee of the site for the fair market value established in the appraisal required under this subsection if the lessee is not selected as the new lessee in a competitive offering. (Eff. __/___/_____, Register __)

Authority:	AS 38.05.020	AS 38.05.073	AS 38.05.080
	AS 38.05.035	AS 38.05.075	AS 38.05.810
	AS 38.05.070		

11 AAC 59.200. Re-Lease of wind power generation site. (a) When an existing lease of state land for a wind power project expires, the department may elect to issue a new lease for a wind power project on the site through the competitive process described in AS 38.05.070 – 075 and this chapter.

(b) The department will require prequalification of all bidders in a competitive process for a lease described in AS 38.05.070 – AS 38.05.075 and this chapter. To be prequalified, a person shall demonstrate that it meets minimum criteria the department establishes for each proposed re-lease by submitting to the department

(1) A complete application for a wind power generation project lease under 11

AAC 59.100;

(2) unless the person is a licensed utility, a power sales agreement with a licensed utility or other power purchaser; and

(3) a complete plan of operations acceptable to the department for the operation of the existing wind power generation facilities and any plans for future development of the site.

(c) Each prequalified bidder other than the existing lessee shall submit to the department a deposit equal to the fair market value of improvements, facilities, and equipment located on the lease site as demonstrated by the appraisal required under 11 AAC 59.190(b).

(d) If a bidder other than the existing lessee is determined to be the successful bidder, the department shall ensure that the deposit posted by the successful bidder under (c) of this section is paid to the existing lessee and owner of the existing wind power project equipment and facilities. A deposit submitted by any unsuccessful bidder will be returned to that bidder.

(e) If the department offers a re-lease under this section but receives no bids acceptable to the department, the existing lessee must remove all structures and materials from the site as provided in 11 AAC 59.170(j) and the lease. (Eff. __/__/_____, Register __)

Authority:	AS 38.05.020	AS 38.05.073	AS 38.05.080
	AS 38.05.035	AS 38.05.075	AS 38.05.810
	AS 38.05.070		

Article 4. General Provisions (11 AAC 59.210- 11 AAC 59.290)

Section

290. Definitions

11 AAC 59.290. Definitions. In this chapter

(1) "fair market value" has the meaning given in 11AAC 58.910(11);

(2) "licensed public utility" means an entity that has obtained a certificate of public convenience and necessity from the Regulatory Commission of Alaska as provided in AS 42.05.221;

(3) "meteorologic data" means data that deals with the atmosphere and its phenomena, especially wind and weather forecasting;

(4) "person" has the meaning given in AS 01.10.060;

(5) "rental" means any form of compensation that the lease requires the lessee to pay, as set out in AS 38.05.073(m).

(6) "repowering" means refurbishing or re-configuring an existing wind turbine to increase its power capacity; "repowering" does not include restoring a damaged or failed turbine to its original operating capacity or performing normal maintenance.

(7) "re-lease" means a process for leasing land, property or facilities that were subject to a previous lease the term of which is ended or approaching its end. (Eff. __/___/_____, Register __)

Authority:	AS 38.05.020	AS 38.05.073	AS 38.05.080
	AS 38.05.035	AS 38.05.075	AS 38.05.810
	AS 38.05.070		