

Public Comment Response Summary
Proposed Revisions to 18 AAC Chapter 75 – Articles 4 and 9

January 11, 2016

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Introduction

The Alaska Department of Environmental Conservation's Prevention, Preparedness, and Response Program is engaged in a multi-year effort to clarify and update Article 4 of 18 AAC 75. This package also includes changes to Article 9 where definitions have been added or clarified.

Summary of changes

This packet is being proposed to update the language in selected sections of the regulations within Title 18 Chapter 75, Articles 4 and 9. The focus is to update the application and review procedures and public notice and plan review timelines for all regulated operations. The goal is to make the procedures clear and understandable, to modernize the regulations to incorporate the use of the most current technologies for documents and communication, and to provide consistency between related regulations.

The initial proposed changes to the Article 4 sections dealing with application and review procedures (405, 410, 415, 420, 455, and 460) added requirements regarding the format of submittals, how changes to the plan must be identified, to whom the submittals must be distributed, and the posting of the plan on the department's website. This information was repeated in many of the aforementioned sections and the department received several suggestions during the public review to eliminate the repetition. In response to these comments, the department created a new section for universal application procedures (408) and removed the information from the other sections. These changes reduced repetitive language and created more concise and organized regulations.

Organization

This document is organized in a comment/response format and addresses comments made during the formal public review period that ended on 07/06/2015. Similar comments within each section have been grouped together. Similar comments that appeared in numerous sections have been grouped together and added to the Global Comments on page 3.

Please note that any reference to regulations that does not begin with 18 AAC 75 is assumed to begin as such. For example, 400(a) is assumed to be 18 AAC 75.400(a).

Summary of Global Comments

<p>Comment: Several commenters expressed support and appreciation for allowing electronic submittal of documents as well as paper copies as needed.</p>
<p>Comment: Several commenters suggested the department eliminate requirements for paper copies of documents where they appear in Article 4, including public notices, plans, approval letters and certificates issued by the department.</p> <p>Response: While we encourage the submittal of electronic documents, we must still allow the submittal of paper copies. Electronic plans are not reliable for all facilities at this time, and some reviewers may need a paper copy.</p>
<p>Comment: Several commenters requested the regulations adopt commonly used language for amendments including routine updates, minor amendments, and major amendments.</p> <p>Response: The department has added definitions for minor amendment and major amendment to Article 9.</p>
<p>Comment: Several commenters requested that the department provide guidance more specific than “the format will be defined by the department and shall be electronically searchable.” Several commenters suggested the department only allow PDF submittals.</p> <p>Response: The department intends to require an electronic format that is in common use and will publish this in a guidance document. The language does not specify what the format is to allow the department to keep up with changes to what is a common electronic format.</p>
<p>Comment: Several commenters requested the department specify a date when the regulations go into effect.</p> <p>Response: A specific date will be included in the final language when the package is filed by the Lieutenant Governor.</p>
<p>Comment: Several commenters suggested changes to application procedures to clarify the process.</p> <p>Response: Application procedures have been streamlined and placed into a new section: 408. A description of the new section can be found in the summary on page 2.</p>
<p>Comment: Several commenters requested that the department use a single application form.</p> <p>Response: The department currently uses a single application form.</p>
<p>Comment: Several commenters made suggestions about formatting for revisions submitted to the department. Some commenters preferred that changes be identified in the document, and other commenters preferred a table summary of changes.</p> <p>Response: The department’s experience shows that a summary of changes is not always adequate to find specific changes to a plan. The department does not require a specific format, but all changes must be identified in the plan directly so that reviewers are aware of all changes. Language will remain unchanged.</p>
<p>Comment: Several commenters requested clarification to the terms “sufficient for review” and “application and plan are complete.”</p> <p>Response: Definitions were proposed with the package and after reviewing public comment, they were updated for clarification. The regulations and definitions were updated with the term application package.</p>
<p>Comment: Several commenters suggested adding a timeline for the department to notify a plan holder that a Request for Additional Information (RFAI) is coming, and sending that RFAI to the plan holder.</p> <p>Response: The department agrees. Language was added to require the department to notify a plan holder that an RFAI is coming, and to provide that RFAI no later than 90 days after the close of public comment.</p>

<p>Comment: Several commenters requested a definition for “effective storage capacity.”</p> <p>Response: The department changed wording to storage capacity, which is defined in 18 AAC 75.990(121)(c). The definition was updated for clarity.</p>
<p>Comment: Several commenters requested clarification or a definition for “receiving environments.”</p> <p>Response: A definition was added to Article 4.</p>
<p>Comment: Several commenters requested that the department update and clarify public notice procedures.</p> <p>Response: The department has rewritten the language for public notice requirements in 455(b)(2).</p>
<p>Comment: Several commenters requested that new plans and plan renewals be submitted 180 days prior to scheduled start of operations, up from 120 days.</p> <p>Response: The department agrees that plan review may require additional review time. Language was changed to require submittal of new plans and plan renewals 180 days prior to the scheduled start of operations.</p>
<p>Comment: Several commenters suggested adding “and on the department’s website” to the locations where a copy of the plan application will be available.</p> <p>Response: The department agrees. Language has been added.</p>
<p>Comment: A commenter requested that local governments, tribes, marine mammal co-management organizations, property owners, and Native Allotment owners be added as designated reviewers.</p> <p>Response: The language “other persons designated by the department” allows the department to include each of these groups as a reviewer. Language will remain unchanged.</p>
<p>Comment: A commenter requested that all document submittals be sent to a general state email account, instead of an individual staff member.</p> <p>Response: Due to the volume of the plans it is not practical to have one email address for all plan submittals.</p>
<p>Comment: A commenter requested that the department distribute copies of all public comments.</p> <p>Response: Posting all public comments will not improve the review process for the department or the public.</p>
<p>Comment: Several commenters requested clarification for the word “publish.”</p> <p>Response: The department agrees and updated the language to clarify it.</p>
<p>Comment: A commenter suggested revising section titles to be more descriptive of content.</p> <p>Response: The department agrees and has updated the titles of 405, 410, 415, 420, and 456.</p>

Summary of Specific Comments

18 AAC 75.400

400(c)

Comment: Several commenters made suggestions to clarify this section.

Response: Wording was updated to clarify the requirement applies to all tanks that are removed from service.

Comment: A commenter suggested referencing proposed regulations in addition to statute.

Response: It is not necessary to cite the regulation.

400(f)

Comment: A commenter expressed their support for exempting natural gas production or natural gas terminal facilities from this section, and added that under AS 46.04.900(9) liquefied natural gas production and terminal facilities would be included in this section.

Response: No change needed. This is addressed in statute.

400(h)

Comment: A commenter recommended alternate wording to clarify when a plan is required for a pipeline regulated under 18 AAC 75. The commenter expressed that this would streamline the proposed revisions.

Response: 18 AAC 75 uses the statutory definition of pipeline in AS 46.04.900. No change is needed.

Comment: A commenter suggested deleting the word “properly” before the word “plugged” as compliance with 20 AAC 25.112 specifies the well be “properly” plugged.

Response: The department agrees and has updated the section.

Comment: A commenter suggested changing “or” to “and” in (1)(A) to clarify that both requirements must be met before a plan requirement can be removed.

Response: The department agrees and has updated the section.

18 AAC 75.405

405(a)

Comment: Several commenters expressed support for allowing electronic mail or facsimile transmission as an approved form of written notification.

405(b)

Comment: Several commenters inquired about the timeframe for consultation with the department.

Response: Language has been added to require the applicant to schedule the consultation at least 30 days prior to submitting the plan and application package.

Comment: A commenter suggested that a guidance document be prepared for this meeting.

Response: The department agrees and will develop a job aid with essential topics to be discussed. Plan reviewers will tailor it to cover the specific needs for each type of facility and plan.

Comment: A commenter expressed support for the concept consultation prior to submittal of plan applications. The commenter appreciates that the change will allow road blocks to be addressed prior to submittal.

18 AAC 75.410

410(a)

Comment: Several commenters suggested that plan packages sent out during the review process include either all documents incorporated by reference, or those that are not readily available in the public domain.

Response: Documents incorporated by reference are generally not subject to public review. The department will not require a plan holder to make documents, including those that may contain proprietary information, operational procedures, or information that could pose a safety or security risk, subject to public review. The department will continue to require certain referenced documents be made available during public review periods when it finds the document is essential to demonstrating the plan holder's ability to respond to Response Planning Standard discharges or protect environmentally sensitive areas. Language will remain unchanged.

Comment: A commenter requested that text be changed to clarify whether 18 AAC 75.410(a) applies to a plan or plan amendment.

Response: The department has updated the section to clarify the language.

410(f)

Comment: A commenter suggested that the new subsection (f) be rewritten to match existing language used in 18 AAC 75.205(c)(1)-(7).

Response: The department used language from 18 AAC 15.030, regarding ADEC administrative procedures, to write this section. Language will remain unchanged. Article 2 will be updated to match after this package is complete. During revisions that were made as a result of public comment the contents of 410(f) were moved to 408(b).

18 AAC 75.414

414(a)

Comment: A commenter suggested providing better clarification as to whom and what type of "facility or operation" 414(a) applies to.

Response: 400(a) describes what facilities Article 4 applies to.

Comment: A commenter requested that all owner/operator changes be subject to public review under 455.

Response: The department disagrees. If there are no changes to the plan, then training, equipment, PRAC, and other plan components will remain the same. Change of owner/operator will not automatically trigger public review under 455.

18 AAC 75.415

415(a)

Comment: Several commenters felt that a change in location should not trigger review under 455, and requested changes to language in 415(a)(1) to add conditions or receiving environment instead of location.

<p>Response: Language was updated to expand the criteria in 415(a)(1)-(5) that the department will use to determine when the submittal is a major amendment which requires review under 455. A change in location might result in the same receiving environment, but different operating constraints.</p>
<p>Comment: Several commenters noted that 415(a)(2), “a change to the season of operations that would affect the response scenarios,” is not good criteria to determine if a plan will be reviewed under 455.</p> <p>Response: The department disagrees. Different seasons may require different response tactics, so the plan must be reviewed.</p>
<p>Comment: Several commenters suggested changing the wording of 415(a)(3) to clarify the plan boundaries in the paragraph are the regions referred to in 495.</p> <p>Response: “Plan boundaries” is not intended to mean the regions as set out in 495. Wording has been updated to clarify this.</p>
<p>Comment: A commenter suggested adding language to 415(a), “...unless it is a routine plan update under (b) of this section or a specific response to a Condition for Approval...”</p> <p>Response: Conditions of approval can vary widely and may represent a significant change to a plan. By using the criteria set out in (a), the department may determine that a condition of approval may require review under 455. They will not be added to (a).</p>
<p>Comment: A commenter stated that land-based facilities and marine vessels should be regulated in the same manner.</p> <p>Response: The department disagrees. Land based facilities are different than marine vessels and need to be regulated differently.</p>
<p>Comment: Several commenters expressed concern with the term “substantive changes” in 415(a)(4). One commenter suggested changing “substantive changes” to “significant changes,” as that term is already defined in 990(114).</p> <p>Response: The department has updated the paragraph and removed the term.</p>
<p>Comment: A commenter requested that the department define training requirements for response and prevention referred to in 415(a)(4).</p> <p>Response: Prevention training is addressed in Article 1. Response training is addressed in 425(2)(3)(i), 426, 445(j), and 446(g).</p>
<p>Comment: Several commenters suggested additional criteria be added to 415(a)(1) including change of owner/operator, change of oil spill response organization, change in Primary Response Action Contractor (PRAC), change in Best Available Technology (BAT), change in prevention measures, change in response resources, change in the season of operation, and any proposed decrease to oil spill prevention capability.</p> <p>Response: The criteria in 415(a)(1)-(5) have been updated to capture changes that require public review. Change of ownership requirements are discussed under 415, and can trigger public review.</p>

415(b)

<p>Comment: A commenter expressed concern that changes made to a plan to meet conditions of approval could unnecessarily trigger public review.</p> <p>Response: Conditions of approval can vary widely and may represent significant changes to the plan. By using the criteria set out in 415(a), the department may determine that a condition of approval requires a review under 455.</p>
<p>Comment: Several commenters noted that 415(b) as written requires changes to be identified.</p> <p>Response: The department did not intend to require that changes be identified for routine updates. Language has been updated to remove that requirement.</p>

Comment: A commenter suggested the word “proposed” be deleted from the first paragraph of this subsection.

Response: The department agrees, and has updated language.

415(c)

Comment: A commenter requested that the department make changes to Article 2 to match those in this subsection in order to align time frames for issuing a certificate of financial responsibility and plan review for a spot charter.

Response: The department appreciates the comment, but is not addressing Article 2 in this package.

415(f)

Comment: A commenter expressed support and appreciation for the department’s effort to clarify the amendment review process.

Comment: A commenter noted that the proposed revisions to 415 direct the department to notify a plan holder within 10 working days if an amendment will be reviewed under 455, but in 455 the department has 7 working days to determine if the application is sufficient for review.

Response: The evaluations of a plan under 415(f) and 455 are not the same. The department does not intend to have these reviews occur simultaneously.

Comment: Several commenters requested that the department notify plan holders regarding the status of an amendment review in all cases.

Response: The department agrees. Language now requires the department to notify a plan holder that it will issue a written decision not later than 30 days of receipt of a proposed plan amendment.

415(g)

Comment: Several commenters requested that the department clarify this section.

Response: The department streamlined the application process and incorporated the contents of 415(g) into 408. 415(g) has been updated.

415(h)

Comment: A commenter suggested adding a timeline of 30 days to the requirement for a plan holder to send final copies to stakeholders.

Response: The department agrees and language has been updated.

18 AAC 75.420

420(a)

Comment: A commenter expressed support for the specific timeframe in which to submit a plan renewal application.

Comment: A commenter suggested that “... or the number of days stated in the plan approval letter under...” be removed from this subsection.

Response: The department disagrees. Some individual plans are complex and require additional time to review. In those cases, the submittal date is indicated in the approval letter.

420(c)

Comment: A commenter requested that factors which require a plan holder to submit copies of their plan, even though it was unchanged, be added to 420(c). The commenter stated that the existing language is too broad.

Response: Additional copies of a plan may be needed, even if the plan was not changed. A plan reviewer needs the ability to request an additional copy if necessary.

18 AAC 75.455

455(a)

Comment: A commenter suggested adding language to clarify this section does not deal with routine updates or minor amendments.

Response: The department agrees and language has been updated.

Comment: A commenter suggested increasing the seven day review period where the department determines if an application is sufficient for review to 10 working days do provide adequate time to review plan contents.

Response: The department disagrees. This is not the extensive review period for the department. The review at this point is to make sure that the submittal has the necessary information to address provisions needed for public review.

Comment: A commenter suggested adding definitions for *application content*, *application quality*, and *application timeline*. The commenter feels that plan holders have little incentive to submit a complete and high quality plan for review. Instead, they can rely on the department and public to point out deficiencies and drag out the review process.

Response: The department did consider updating the process to allow for a complete review, followed by a decision, and then public comment on that decision. It was thought that the proposed language would be a more acceptable, efficient, and transparent process for the public.

Comment: A commenter requested language be added that requires the department to notify designated reviewers that a plan has been submitted by a plan holder.

Response: Language has been updated to require that the applicant notify the reviewers when a minor amendment is submitted. When an application package for a new plan, plan renewal, or major amendment is sufficient for review, the applicant is required to provide copies to reviewers.

455(b)

Comment: A commenter noted that coordinating public notice with the actual start of the review process is difficult, and if not done correctly can result in the need for a second round of public notices.

Response: The department contacts the plan holder and they work together to define the public notice period. There have been challenges when the notice was not published as agreed upon.

Comment: A commenter suggested adding language that would automatically approve a plan if the department did not provide an RFAI to a plan holder within 21 days after the close of public comment.

Response: The department disagrees. Language was updated to require the department to notify a plan holder that an RFAI is coming, and to provide that RFAI no later than 90 days after the close of public comment.

Comment: A commenter expressed concern that under the proposed regulations the applicant is no longer required to provide information to designated reviewers.

Response: Initial responses to the RFAIs by the plan holder may be incomplete and sending these to all parties specified under 455(b)(1) would be a burden. 455(c)(4) requires that the complete responses to the RFAIs are sent to the parties specified under 455(b)(1).

Comment: Several commenters requested that 455(b)(5) be replaced with language setting a timeline for a plan holder to respond to an RFAI.

Response: The department does not agree that a specific time frame for the plan holder to return the RFAI to the department is needed. There are many plans that are reviewed by the department and they vary in complexity. Staff evaluate the complexity of the RFAI to determine if a deadline is needed, and what that should be.

Comment: A commenter suggested reordering 455(b) by placing 455(b)(3) before 455(b)(2) as they felt they were out of order.

Response: The department disagrees. The steps that the department takes are in order.

Comment: A commenter suggested requiring requests for a copy of the application and plan to be in a written format.

Response: The department disagrees. Requiring that requests are in a written format does not help the department respond to the public.

Comment: A commenter requested that the initial public comment period be increased from 30 calendar days to 45 calendar days to provide reviewers with adequate time.

Response: 30 days generally provides adequate time for reviewers but language was updated to allow the department discretion to allow for a maximum of 45 days.

Comment: Several commenters requested that the amount of time for comment on additional information supplied by an RFAI be increased from 10 calendar days to allow sufficient time for review.

Response: The department disagrees. The proposed language allows for more than 10 days if the RFAI is lengthy.

Comment: Several commenters requested that a comprehensive findings document be provided for all approved plans. One commenter suggested that all findings documents be posted on the department's website.

Response: The language has been updated to clarify when a basis of decision will be included. Findings documents for approved plans will be made available on the department's website.

455(c)

Comment: A commenter suggested adding language that requires the department to verify that all requests for additional information have been addressed not later than 7 days after receipt of an RFAI. The commenter is also concerned that the proposed regulation allows the department to issue incomplete RFAIs, and suggested adding language prohibiting "do-over" requests.

Response: 455(c) states when additional RFAIs will be requested. As outlined, the department does do a comprehensive review and provides RFAIs based on that. There are times that a response to an RFAI changes or brings another part of the plan under question, so an additional RFAI may be required as allowed under 455(c). During revisions that were made as a result of public comment, all of the RFAI text has been grouped in (c).

455(d)

Comment: A commenter requested that language be added to 455(d) detailing when an additional RFAI may be sent to the applicant.

Response: 455(c)(3) and (4) states when additional RFAIs will be requested. There are times that an amendment or a response to an RFAI changes or brings another part of the plan under question, so an

RFAI may be required. During revisions that were made as a result of public comment, all of the RFAI text has been grouped in (c).

455(e)

Comment: A commenter suggested adding language to clarify how a secondary 10 day public comment period is communicated to the public.

Response: The current language allows the department the flexibility to communicate to the public based on their needs. The language will remain unchanged.

455(g)

Comment: A commenter noted that the department referenced 455(c) instead of 455(e).

Response: The department agrees. During revisions that were made as a result of public comment, the reference has been moved to (d).

455(i)

Comment: A commenter noted that the department referenced 455(c) instead of 455(e).

Response: The department agrees. During revisions that were made as a result of public comment, the reference has been moved to (d) and (i) was eliminated.

Comment: Several commenters recommended that the department issue a written decision within 60 days after receipt of a complete application.

Response: The current timeline of 65 days is appropriate for departmental review. Language will remain unchanged.

18 AAC 75.456

456(a)

Comment: A commenter suggested that the department streamline plans for tank vessels.

Response: The department appreciates the comment, but is not addressing this in this package

18 AAC 75.457

Comment: A commenter suggested that the department should repeal 457 as its purpose is unclear.

Response: This regulation is rarely used but needs to be in place to allow the department to be prepared in the event of an emergency.

18 AAC 75.460

460(a)

Comment: A commenter suggested that language from AS 46.04.030(r)(2) be included in this subsection to clarify that plans will not be approved unless they meet the statutory definition “in compliance with the plan.”

Response: To avoid confusion over definitions, the department is not allowed to repeat statutory language in regulation. The language will remain unchanged.

Comment: A commenter requested that language be added to allow the department to issue short term approvals, not to exceed 90 days, if the department determines it needs additional time to arrive at a decision, or in the event of a natural disaster.

Response: In the event that additional time is taken to approve a plan, the department may issue a short term extension for an existing plan. This occurs infrequently. Language will remain unchanged.

460(b)

Comment: A commenter requested a reference to AS 40.25.120(a) and AS 46.04.025 dealing with redaction be included in this subsection.

Response: To avoid confusion over definitions, the department cannot repeat statutory language in regulation. The language will remain unchanged.

Comment: A commenter requested increasing the time plan holders have to publish and provide their approved plan to the department from 30 days to 60 days to allow plan holders more time to respond to conditions of approval.

Response: Conditions of approval typically do not have to be met before a plan is published. Language will remain unchanged.

Comment: A commenter recommended that disapproval language in (b)(2) be separated from approval language.

Response: The language was moved as written to (b)(1). The department does not see a benefit to separating the language.

460(c)

Comment: A commenter suggested section (c) add language stating approval will be sent by certified mail or equivalent.

Response: The department currently sends approval by email, which is faster than US mail. The language will remain as written.

[18 AAC 75.465](#)

465(a)

Comment: A commenter suggested the department change references to the “certification log” to “Contingency Plan Verification Log” to reflect the actual name of the form.

Response: The department agrees, and has updated language regarding the form.

[18 AAC 75.990](#)

Comment: A commenter expressed concern that the proposed definitions of “sufficient for review” and “application and plan are complete” would allow incomplete plans to be placed into public review. The commenter felt that applications going to public review should meet “application and plan are complete” criteria.

Response: The department disagrees. A plan meeting “sufficient for review” criteria requires that the plan and application contain all necessary information for the public review. The department does not intend to pre-approve applications before the public review.