

Public Comment Response Summary  
Oil Discharge Prevention and Contingency Plans and Nontank Vessel Plans  
Proposed Revisions to 18 AAC Chapter 75, Article 4  
January 6, 2023

### Introduction

The Alaska Department of Environmental Conservation's Prevention, Preparedness, and Response Program proposed this package to amend regulations in 18 AAC 75, Article 4 to update oil discharge prevention and contingency plan requirements for facilities and operations subject to AS 46.04.

### Summary of changes

This package proposed to amend regulations in 18 AAC 75, Article 4 that cover a wide range of requirements for oil discharge prevention and contingency plans. Proposed revisions address application processes, plan content and approval criteria, plan review processes, approval decisions, and compliance verification activities for facilities subject to planning oil pollution prevention, planning, and response requirements under AS 46.04, Article 1, Oil Pollution Control.

Based on review of all comments and recommendations received during the 90-day public review period, the department made several changes to the original proposal. These changes are described individually in the responses to comments, as appropriate.

A few highlighted revisions include:

- Removed the requirement for exploration and production facilities to have their Well Blowout Contingency Plans approved by the Alaska Oil and Gas Conservation Commission;
- Adopted the *Wildlife Protection Guidelines for Oil Spill Response in Alaska* by reference;
- Clarified the documents that must be available for inspection at facilities;
- Removed the requirement for oil terminal facilities to maintain verification logs for five years;
- Addition of a new section, 18 AAC 75.402, outlining a 180-day transition phase to ensure recent plan applications and applications submitted during the transition phase are subject to content and review requirements based on the application submittal date. The transition phase only applies to specific parts of the regulations.

### Out of Scope Comments and Future Regulation Improvements

The department appreciates the time and effort public reviewers made to provide comments on this regulation package. In our response to comments below, we identified many comments that were outside the scope of the proposed regulations. These comments include:

- comments on regulations for which we did not propose any change, including many provisions that merge current regulations in 18 AAC 75.425 and 18 AAC 75.445, and
- substantive or unrelated comments on regulations for which only editorial corrections for clarity or technical corrections were proposed.

By identifying comments as outside the scope of the proposed regulations, the department is not addressing the value or accuracy of the comments. They are simply outside of the scope established in the project's Public Notice of Proposed Changes (<https://notice.alaska.gov/204253>) and the proposed text of the regulations. The improvements in this package to the oil discharge prevention and contingency plan regulations are significant for the regulated industry and the public. The department has determined that delaying implementation of these improvements to address comments outside the scope is not beneficial.

The department is committed to updating our prevention regulations in 18 AAC 75, Article 1 more frequently to ensure regulations align with current technical standards that ensure environmental protections for the people, lands, and waters of the state. We intend to continue improving response planning regulations to ensure the regulated industry is fully prepared to respond to discharges of the statutory response planning standard volumes and to protect environmentally sensitive areas.

To achieve this goal, the department will review its regulations in 2023 to identify corrections or updates to improve the oil discharge prevention and contingency plan regulations. In developing future regulation proposals, we will consider out of scope comments received during the comment period for this regulation package as well as input from regulated operators, the general public, and department staff. In the first quarter of 2024, staff will brief the Commissioner's Office on any recommended regulatory revisions. If additional input is needed to refine a proposal, we will conduct a public scoping process.

### Organization

This document is organized in a comment/response format and addresses comments made during the formal public review period that ended on January 31, 2022. Substantially similar comments and responses have been aggregated by topic. In cases where more than one commenter made the same comment with or without variation to the language used, only one instance of the comment is repeated. The comments are listed in order of the applicable regulations. General comments and comments that apply to multiple sections are found at the end of the document.

List of acronyms and abbreviations used:

485 exercise: An exercise conducted to satisfy the requirements of 18 AAC 75.485

ADFG: Alaska Department of Fish and Game

ADNR: Alaska Department of Natural Resources

AOGCC: Alaska Oil and Gas Conservation Commission

AST: aboveground storage tank

BAT: best available technology

CIRCAC: Cook Inlet Regional Citizens' Advisory Council

Drafting Manual: Drafting Manual for Administrative Regulations, prepared by the State of Alaska Department of Law, August 2018 (22nd Edition)

DEC, the department: Alaska Department of Environmental Conservation

ESA: environmentally sensitive area

Exercise Manual: the department's Oil Spill Response Exercise Manual (draft version dated October 27, 2021)

HSEEP: Homeland Security Exercise and Evaluation Program

ICS: Incident Command System

IMT: Incident Management Team

ODPCP, plan: oil discharge prevention and contingency plan

OSRO: oil spill removal organization

PRAC: oil spill primary response action contractor

PREP, (N-PREP): Preparedness for Response Exercise Program

PWS: Prince William Sound

PWSRCAC: Prince William Sound Regional Citizens' Advisory Council

RCAC: Regional Citizens' Advisory Council

RFAI: request for additional information

RMOD: realistic maximum oil discharge

RMROL: realistic maximum response operating limitations

RPS: response planning standard

USCG: United States Coast Guard

WPG: the Alaska Regional Response Team's *Wildlife Protection Guidelines for Oil Spill Response in Alaska*, Version 2020.1, August 31, 2020

## Response Summary

Comments about costs of the regulations update:

1.	<p><b>Comment:</b> Several commenters made general statements about the cost or potential cost of compliance with the regulation updates, but specific concerns about increased costs were not provided. One commenter appeared to misunderstand the removal of exemptions from Article 4 requirements and thought they would need to create oil discharge prevention and contingency plans for natural gas facilities that are exempt by statute. One comment noted “increased administrative burdens,” but did not describe what those increase administrative costs would be. Another comment noted that paper copies have a cost, but the comment did not state the cost was an increased cost. Another comment noted that the requirement to conduct oil spill exercises could be a potential cost burden to smaller operators, but the commenter did not provide an explanation of how costs to conduct exercises would be increased.</p> <p><b>Response:</b> There are no new classes of facilities required to have oil discharge prevention and contingency plans. The number of paper copies for plan application packages and approved plans has been reduced to one each, eliminating the potential for additional paper copies to be required for the department or other stakeholders. The general plan requirements remain the same, and we have clarified processes that we believe will reduce rather than increase administrative steps. In all cases, plan applicants are expected to review regulations to ensure plan application and content requirements are met. The department does not expect plan holders will need to substantively restructure their plans based on these regulations. The requirement to conduct oil discharge response exercises to verify the ability to implement and approved oil discharge prevention and contingency plan is not new in this regulation. The maximum number of potential planned exercises has not increased.</p>
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18 AAC 75.400 and 405: Applicability, and pre-application procedures

2.	<p><b>Comment:</b> Several comments were received regarding who may submit an application for a vessel contingency plan, at 18 AAC 75.400(a)(2). These include</p> <ul style="list-style-type: none"><li>• suggested changes to the proposed definition of “primary operational control,”</li><li>• the suggestion that the department keep a running record of when persons have relinquished primary operational control of a vessel,</li><li>• suggested additions to the application form required by 18 AAC 75.408, and</li><li>• concerns that the phrase “primary operational control” is not the same language as that used in the federal regulations.</li></ul> <p><b>Response:</b> Thank you for the comments. Comments about tracking when vessels owners relinquish “primary operational control” and about revisions to the ODPCP application form for vessels are noted but these recommendations are not appropriate to be included in regulation. The recommendation to modify the definition of “person with operational control” is noted. The definition does not restrict the applicant from authorizing an agent to sign a plan application on the applicant’s behalf. No change.</p>
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3.	<p><b>Comment:</b> A comment was received regarding exemptions described in 18 AAC 75.400(b). The commenter stated that the approval of exemptions to ODPCP requirements for oil spill response vessels should be subject to public review. The commenter notes the regulation states the department will review application for exemption for oil spill response vessels to determine if the exemption will be protective of human health, safety, and welfare, and of the environment. The commenter requests that these applications should be provided for public review and comment.</p> <p><b>Response:</b> Comment noted. The department did not propose any substantive changes to this section, so the comment is beyond the scope of the proposed regulations. No change.</p>
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4. **Comment:** Several comments were made on proposed changes to section 18 AAC 75.400(c), which describes the requirements for reducing effective storage capacity due to modifications made to the facility. These include:

- Suggestion to provide a definition for “permanently closed,” or for “permanently.”
- “The state currently does not have a definition of ‘emptied’ 40 CFR 261.7 allows up to 0.3 % by weight in an empty container. ADEC should define the term ‘empty.’ Suggest; emptied and cleaned of residual oils.”
- “Use repealed regulatory terminology from Class 2 regulations [18 AAC 75.849(5)]”
- Suggestion to incorporate Article 1 requirements in 18 AAC 75.400(c)(1)(A) - “in accordance with 18 AAC 75.065(o) and 18 AAC 75.080(o)” in place of the requirements proposed in 18 AAC 75.400(c)(1)(A).
- Suggestion to clarify the definition of “storage capacity” and add language in 18 AAC 75.400(c)(1)(B) to specify that the regulation applies to tanks of capacity >1000 gallons.

**Response:** Comments noted. The content of 18 AAC 75.400(c) has been restructured for clarity, but the content has not substantively changed. For the purpose of reducing effective storage capacity at a facility or operation, the regulation describes how an applicant should provide proof of permanent modifications in 18 AAC 75.400(c)(1)(A)-(B). For ASTs over 10,000 gallon capacity regulated under Article 1, and subject to maintenance and inspection programs, specific requirements exist in Article 1 for tanks removed from service and placed in service. The definition of “storage capacity” for a facility in 18 AAC 75.990 only includes oil storage tanks with storage capacities of 1,000 gallons and greater. It is unnecessary to repeat that limitation in 18 AAC 75.400(c)(1)(B). New definitions for terms used here will not be provided. No change.

5. **Comment:** One comment states that the state of Alaska does not have the authority to regulate vessels operating on the high seas under innocent passage (at AS 46.04.055(e)). The comment suggests using AS 46.03.820(a), which “allows ADEC the authority to curtail or restrict these operations if ADEC wishes to do so.”

**Response:** Thank you for your comment. The proposed language is consistent with state, federal, and international law regarding regulation of vessels engaged in innocent passage. AS 46.04.055 is the correct statutory authority for this regulation. No change.

6. **Comment:** “As the ADEC knows, North Slope Borough has sizable natural gas fields in Utqiagvik as well as in Nuiqsut, and the potential rescinding of a long-standing exemption for natural gas infrastructure, directly and immediately impacts the North Slope Borough’s ODPCP. Additional clarification is required on whether natural gas wells, condensate flare tanks and associated natural gas transportation pipelines and processing facilities are required to be included within ODPCP’s.”

**Response:** 18 AAC 75.400(f) and (g) are repealed solely because they are duplicative of statutes at AS 46.04.050(b) and (c). The exemptions have not changed; the statutes at AS 46.04.050(b) and (c) continue to apply. The statutory exemptions include certain natural gas facilities and operations.

7. **Comment:** Six commenters expressed concern that the proposed change to 18 AAC 75.400(j) meant that the same individual employee or representative of the applicant was required to sign both the plan application and proof of financial responsibility applications. In each case, commenters noted that different individuals within their organizations were authorized to sign the required applications. Numerous commenters recommended to remove this new requirement.

**Response:** Thank you for your comments. We disagree with modifying the requirements in 18 AAC 75.400(j) as proposed by commenters. Regulations at 18 AAC 75.408(b) specify the required signer for a plan application, and include the option to delegate an agent with authority to sign on behalf of the applicant. This option has not changed in this regulation update.

8.	<p><b>Comment:</b> A number of comments were made regarding the requirement in 18 AAC 75.405(a) to submit the written notice to the department 60 days prior to submitting the application package for a new plan renewal. These suggestions included shortening the 60 days to 30 days, and changing the language to include a “scheduled submission date”, as in 18 AAC 75.405(b) (proposed.)</p> <p><b>Response:</b> We have edited the regulation at 18 AAC 75.405(a) to clarify that the applicant must notify the department at least 60 days before the “scheduled submission date.” This change, the corresponding change made in 18 AAC 75.405(b) noted in the comment, and a clarifying edit to the phrasing of 18 AAC 75.405(d) were made to ensure that the new subsection in 18 AAC 75.405(d) would not be misunderstood. While the timeframes remain, applicants may submit their application packages as soon as they have completed the consultation required in 18 AAC 75.405(b). Based on comments received during the 2019 public scoping, the department considered shortening this timeline, but determined the 60-day notification prior to the scheduled application date is appropriate.</p>
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9.	<p><b>Comment:</b> A number of comments were made regarding the requirement in 18 AAC 75.405(b) to consult with the department no later than 30 days prior to the scheduled submission date for the package. These suggestions include clarifying the phrase “not later than 30 days before” retained from current regulations, eliminating the pre-application consultation for plan renewals, and concerns over the length of the overall application timeline.</p> <p><b>Response:</b> Based on comments received during the 2019 public scoping, the department considered shortening the consultation timeline but determined that requiring a pre-application consultation at least 30 days before the scheduled application submission deadline is appropriate. We have made a minor language revision to 18 AAC 75.405(b) to replace “not later than... before” with “at least.” We have reviewed instances of “no later than... before” throughout the regulations package and replaced them with clearer language as applicable. No additional changes made.</p>
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18 AAC 75.408 - 421: Procedures to apply for plans

10.	<p><b>Comment:</b> One comment suggested a change to the title of section 18 AAC 75.408.</p> <p><b>Response:</b> Comment noted. For consistency, the title used for section 18 AAC 75.408 in the current regulations will not be changed.</p>
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11.	<p><b>Comment:</b> Several comments had suggestions for changing the language of 18 AAC 75.408(a). These include repealing the requirement in 18 AAC 75.408(a)(3) to include in the application package “supporting documentation as requested by the department,” and amending the language in 18 AAC 75.408(a)(1)(E) by adding “for new plans or amendments,” to the beginning of “(E) the scheduled date for the operations covered by the plan to begin.”</p> <p><b>Response:</b> Although minor editorial changes were proposed for this subsection, the content and implementation of 18 AAC 75.408(a) was not proposed to change. These comments suggest substantive changes that are outside the scope of the proposed regulation.</p>
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12.	<p><b>Comment:</b> 18 AAC 75.408(b). Multiple comments expressed concern about the change to application signer requirements, noting that the proposed citation does not include all of the currently allowed signers. Some comments recommended specific revisions to correct the removal. Others noted a possible technical problem with referencing 18 AAC 75.15.030.</p> <p><b>Response:</b> Thank you for your comments. The department has decided to retain the language in the current regulations at 18 AAC 75.408(b) that identifies required signers for oil discharge prevention and contingency plan applications.</p>
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13.	<p><b>Comment:</b> Many comments were received regarding the designated recipients for electronic distribution of plan materials described at 18 AAC 75.408(c). Most of these comments requested that the RCACs continue to be specifically identified as recipients of plan updates, amendments and plans for review; some comments also included ADNDR and ADFG. Some comments stated that the regulations need to keep the RCACs as plan reviewers. Some request that RCACs and other interested stakeholders be notified of minor amendments. Some comments cite the Alaska Oil Spill Commission report and the Oil Pollution Act of 1990 (OPA 90) as the basis for specifically designating the two regional citizens’ advisory councils in ODPCP reviews.</p> <p><b>Response:</b> Thank you for your comments. As required by regulation in 18 AAC 75.455(h), the department enters into an annual agreement with the Alaska Department of Natural Resources and the Alaska Department of Fish and Game for their assistance in reviewing oil discharge prevention and contingency plans. The annual agreement covers communication between agencies and establishes plan review priorities. The requirement for these agreements is not proposed to change in this regulatory package. The agreements will continue to ensure the statutory requirement under AS 46.04.030(j) for providing copies of contingency plans to each department is met.</p> <p>The work of the Councils under OPA 90 serves many of the purposes and goals recommended by the Commission. Providing copies of oil discharge prevention and contingency plans to CIRCAC and PWSRCAC is not mandated by statute. The department recognizes the work each Council does for the communities and interests they represent and within their OPA 90 role as annually certified by the U. S. Coast Guard. The department fills an ex officio position on each Council, and endeavors to work as a cooperating partner with each one. The department's commitment to ensuring both Councils have access to plan application packages for new plans, renewals, and amendments for facilities and operations within their OPA 90 mandated roles is not diminished nor would it be enhanced by specifically naming each Council in regulations. As described in this regulation, all stakeholders, including CIRCAC and PWSRCAC, if desired, have full access to plan application packages through the department's website. We will use the listserv to communicate when public review of application packages start, and we will post packages as detailed in 18 AAC 75.408.</p>
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14.	<p>Several comments were received regarding the requirement for submitting paper copies and electronic copies in 18 AAC 75.408(c), and by extension 18 AAC 75.415(h). These are addressed individually:</p> <p><b>Comment 1, Number of paper copies required:</b> Requiring the submittal of paper copies of final approved plans at AAC 75.408(c)(1) “... does not align with the use of current technology, and is a step backwards not forwards,” “should not be required,” “does not support the intent of the amendment changes from 2016,” “is an administrative burden with little value added,” and “will just add to the cost and time to the submittal process.” Suggested changes are to remove the requirement for paper copies entirely, or add “upon request” to the end of AAC 75.408(c)(1).</p> <p><b>Response 1:</b> The department considered the need for paper copies when drafting the proposed updates, and concluded that one paper copy upon request may be necessary, and a final paper and electronic copy of the approved plan is necessary for all plans. The department notes that the updated requirement represents a reduction in the number of paper copies that may be requested. The notification requirements located in proposed 18 AAC 75.408(c) have been reorganized into 18 AAC 75.408(c) and (d) in the final rule.</p> <p><b>Comment 2, plan format:</b> 18 AAC 75.408(c)(1)(C) currently states “the department will specify the electronic format to be used; the submittal must be electronically searchable”. Suggestions:</p> <ul style="list-style-type: none"> <li>• Edit to “state that a .pdf file with bookmarks is the department’s preferred means of submittal,... as this file type is industry standard and the widely utilized by both industry and the department.”</li> <li>• edit to state “the department will specify the electronic format to be <b>used during the preapplication consultation required under 18 AAC 75.405(b)</b>”</li> <li>• edit to state “the submittal must be electronically searchable and <b>non-editable</b>,”</li> </ul>
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**Response 2:** While 18 AAC 75.408(c) has been repealed and readopted, the requirement for the electronic submission format is retained from current regulations. The department did not propose a substantive change to this provision, so this request is outside the scope of the proposed regulations. No change.

**Comment 3, providing copies of the plan in an alternative format:** “18 AAC 75.408(c)(3)(B) removes the requirement for the applicant to provide [sic] copies of the application to ADFG, RCACs and ADNR and substitutes the department posting the final version of the application on the website and notifying stakeholders it has been posted.”

Suggestion: “Language should be included to allow ADNR, ADFG and other [sic] to request hard copies of the package from the applicant.”

Suggestion: 18 AAC 75.408(c)(1)(B): “a person that is not able to access the documents from the department's Internet website shall submit a request to the department for an alternate format to be provided and the department will approve or disapprove the request; if approved, **the department will notify the plan holder** to provide the package to the requester in an alternate format;”

**Response 3:** Thank you for your comments. We have edited the relevant text, now located at 18 AAC 75.408(c)(1)(C), to state the department will notify the plan applicant to provide an alternate package to a requester if approved by the department and to specify that the alternate format will be an electronic format.

**Comment 4, requiring plan revisions to be provided in a table format:** 18 AAC 75.408(c)(2) “There is little value in requiring changes to be tracked and described in a table format – could lead to errors and confusion” Suggestion: “all proposed additions, revisions, and deletions must be identified in the plan as applicable; **the plan holder may elect to summarize the changes in another format;**”

**Response 4:** Thank you for your comments. The department generally agrees with this recommendation. We have revised the language in 18 AAC 75.408(c)(2) to state “the department may also request a summary of changes in a table format;” The table is in addition to the required identification of proposed additions, revisions, or deletions to the plan.

**Comment 5, language:** Suggestion to change “final version of the application package” to “approved plan” and “package” to “plan” at 18 AAC 75.408(c)(3)(b) and 18 AAC 75.408(c)(4).

**Response 5:** Thank you for your comment. The department will post both the application package and final approved plan to the website, and notify stakeholders when these documents have been posted. The language at proposed 18 AAC 75.408(c)(4) has been revised to clearly reflect this, and is now located in 18 AAC 408(d)(3).

**Comment 6, Supportive comments:** Several comments recognize and applaud that the proposed regulations represent a reduction in paper usage. Comments note that the department taking responsibility for posting documents and notifying stakeholders reduces burden on plan holders.

**Response 6:** Thank you for your comments.

15. **Comment:** 18 AAC 75.415(f). One comment states the department does not meet the 10-day timeline for notification of minor amendments, and they recommend removing that obligation. Comments request that the regulations clarify the timing of RFAI requests for minor amendments, request that the timeline for determining if the amendment is major or minor (10 days) be aligned with the timeline for determining whether the application is sufficient for review in 18 AAC 75.455 (seven working days), and comments propose alternate language for the department to consider.

**Response:** Comments noted. The department did not propose a substantive change to the deadline for determining whether a plan amendment application is a major or minor amendment, so this comment is outside the scope of the proposed regulations. For an application submitted as a minor amendment and determined to be a major amendment, the seven working day timeline for sufficiency review under



	<p>18 AAC 75.455(a) does not begin until the amendment is determined to be a major amendment. No change to timelines. A clarifying edit was made to specify “amendment application package” as appropriate in 18 AAC 75.415.</p>
16.	<p><b>Comment:</b> Comments were received on the requirement to submit an application package 180 days before the proposed start of operations (new applications at 18 AAC 75.410(a), renewals at 18 AAC 75.420(a). Some comments requested longer timelines because plan review can take longer than 180 days, while others requested shorter timelines because 180-day plan reviews combined with the 60-day notice (240 days) is a long timeframe that impacts business opportunities.</p> <p><b>Response:</b> The department did not propose to change the timeline for submitting plan applications in this regulations update. These comments, therefore, are outside the scope of the proposed regulations. Thank you for your comment. No change.</p>
17.	<p><b>Comment:</b> Two commenters request that the department add language to clarify that the changes described in 18 AAC 75.414 are a minor amendment.</p> <p><b>Response:</b> Comment noted. DEC did not propose any changes to this section, so comments suggesting changes are beyond the scope of the proposed regulations.</p>
18.	<p><b>Comment:</b> 18 AAC 75.415(a). A number of comments requested that certain categories of amendments that are currently considered minor should be listed under 18 AAC 75.415(a) as major, including changes in plan ownership, operator, and name change. For example:</p> <ul style="list-style-type: none"> <li>• “When a facility or operation comes under new ownership or when new operators assume control, members of the public should have an opportunity to review and comment on those changes. Accordingly, plan amendments triggered by a change in the ownership of a facility or operation—or a change in the operator of a facility or operation—should be considered major amendments subject to public review.”</li> <li>• “A Major amendment should be defined as any change in the amount, location, quality or direct control of prevention and response capabilities effecting the requirements of 18 AAC 75.448.” - this may include “manning reductions, changes from on-site monitoring to remote monitoring, PRAC or OSRO changes,... shift from on-site monitoring to remote monitoring, dedicated response resources to contracted resources, changes to RMROL, relocation of primary Emergency operations centers or initial command posts.”</li> </ul> <p><b>Response:</b> Comments noted. DEC did not propose any changes to this subsection, so comments recommending changes are beyond the scope of the proposed regulations. The change proposed in these comments was also proposed during the 2019 public scoping; the department has considered the suggestion, and determined the original language is appropriate.</p>
19.	<p><b>Comment:</b> 18 AAC 75.415(b). Comments were received stating the change from five to 10 working days to submit a routine plan update is a good change. Commenters also suggested changes to components of the regulation that were not proposed to change, including:</p> <ul style="list-style-type: none"> <li>• change criteria from “names, addresses” to “titles, affiliation”</li> <li>• change “included” to “are limited to”</li> <li>• change “in accordance with 18 AAC 75.408” to “to the department”</li> <li>• add the reference “as required be 18 AAC 75.451(d)”</li> <li>• add the phrases “The department does not review and approve routine plan updates” and “Routine plan updates are limited to”</li> </ul> <p><b>Response:</b> Comments noted. The department did not propose additional substantive changes to this provision, so the recommendations above are outside the scope of the proposed regulations. No changes.</p>

20.	<p><b>Comment:</b> Comments on 18 AAC 75.415(c) express concern that the timeline for the plan amendment to be submitted, (five working days before the vessel enters state water) is the same as the department's review timeline. Comments recommend revising this timeline, for example so that the amendment must be submitted 10 days in advance, leaving a five working day buffer before the vessel is due to enter state waters.</p> <p><b>Response:</b> Comments noted. DEC did not propose a substantive change to the deadlines in this subsection, so comments suggesting a substantive change to the deadlines are outside the scope of the proposed regulations.</p>
21.	<p><b>Comment:</b> 18 AAC 75.415(h). A comment stated that the proposed language in this regulation is unclear. The commenter asks, if the department approved a “draft” of the proposed amendment, and if the amendment was “approved,” why would the plan holder be required to submit a final copy 30 days after approval?</p> <p><b>Response:</b> Comment noted. Language at 18 AAC 75.415(h) has been revised to clarify that the plan holder must submit a copy of the approved amended plan. The approved plan may include edits required by the department, conditions of approval required by the department, the department’s approval certificate, an updated revision record, and the correct effective date. None of these components are part of the “draft” amendment. The final approved plan must be provided as required under 18 AAC 75.408(c)(1) and if applicable, 18 AAC 75.408(c)(1)(A).</p>
22.	<p><b>Comment:</b> 18 AAC 75.415(i). Comments were made regarding the new requirements for temporary aboveground storage tank amendments:</p> <ul style="list-style-type: none"> <li>• request clarification of “temporary basis,”</li> <li>• suggest moving the definition of temporary basis from section 18 AAC 75.489 into section 18 AAC 75.415,</li> <li>• request to remove the condition “but does not include tanks that are moved within the facility and used for more than 12 months,”</li> <li>• request to change “An amendment application to allow the addition of an aboveground oil storage tank with a storage capacity of 10,000 gallons or greater” to “An amendment application to add a shop-fabricated aboveground oil storage tank,” and change “located” to “placed in service,”</li> <li>• to remove the inclusion of tanks used for “construction and maintenance activities” or to replace the definition by incorporating the phrase “for a duration of less than 12 consecutive months” at 18 AAC 75.415(i).</li> </ul> <p>Some comments applaud the 10 working day timeline to submit the plan amendment package, and 10 working day timeline for department review of a complete package, while others express concern that this timeline leads to the department issuing decisions at the time when the tank is to be placed in service. Comments also suggest specifying “shop fabricated aboveground oil storage tank” instead of “aboveground oil storage tank with a storage capacity of 10,000 gallons or greater.”</p> <p><b>Response:</b> The definition of “temporary basis” is properly located in 18 AAC 75.489 because that term is used in more than one section in Article 4. The term “aboveground storage tank” is defined in 18 AAC 75.990, and it is the proper term for this subsection. The department does not agree with the proposal to change “located” to “placed in service” at the facility. 10 working days after receipt of the application package is adequate time for the department to review and make a decision on an amendment to place aboveground storage tanks at a facility on a temporary basis. The definition of “temporary basis in 18 AAC 75.489 was revised to clarify that “temporary basis” is limited to aboveground storage tanks used for project or maintenance activities and located at a facility for less than 12 consecutive months.</p>

23.	<p><b>Comment:</b> “The repeal of 18 AAC 75.420(c) is appropriate. With the requirement of 18 AAC 75.420(a) still in place this allows ADEC sufficient time to request format or other procedural changes relating to the existing plan.”</p> <p><b>Response:</b> Thank you for your comment.</p>
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24.	<p><b>Comment:</b> Regarding proposed 18 AAC 75.420(e):</p> <ul style="list-style-type: none"> <li>• “This proposed change seems unnecessary and confusing. The intent of a plan renewal application is to review the entire plan contents. Recommend not adopting the proposed changes.”</li> <li>• “Recommend deleting the new language. It is unclear why the department needs to review items in a plan that were reviewed and approved before and not changed”</li> </ul> <p><b>Response:</b> The proposed change in regulation does not constitute a change in DEC’s process for reviewing plan renewal applications. The purpose of the proposed change is to provide clarity on this point. The department's intent in any plan renewal is to continue to be able to review the entire plan contents to determine whether the entire plan complies with oil discharge prevention and contingency plan requirements.</p>
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25.	<p><b>Comment:</b> One commentor suggested changes at 18 AAC 75.421 regarding the timeline to apply for a new streamlined plan.</p> <p><b>Response:</b> Comments noted. The regulations at 18 AAC 75.421 are not proposed to change; substantive revisions to streamlined plan regulations are outside the scope of the proposed regulations.</p>
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18 AAC 75.426 and 429: Streamlined plans

26.	<p><b>Comment:</b> Regarding proposed 18 AAC 75.426(7)(C): “This regulation is subject to wide interpretation by the individual plan reviewer/stakeholders and encourages a lack of consistency within ODPCPs across the regions. Better language is found in 18 AAC 75.426(8)(F) ‘<i>other detailed information pertinent to emergency response.</i>’ While still subject to significant interpretation and encouraging a lack of consistency it is better language.”</p> <p><b>Response:</b> Thank you for your comment. The commenter’s language suggestion would change the meaning of the regulation. The revisions to 18 AAC 75.426(7) were technical edits to align with the Drafting Manual; the department did not propose a substantive change to this provision, so this comment is outside the scope of the proposed regulations. No change.</p>
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27.	<p><b>Comment:</b> One commenter proposed changes to 18 AAC 75.429(d) by stating “that the USCG regulates oil transfer procedures used throughout the state and the procedures should be referenced here;” The commenter suggests the following revision: “(d) Trained personnel shall be familiar with the vessel’s fuel transfer procedures and take all appropriate measures to prevent spills or overfilling during a transfer of oil, including the following fuel transfer procedures <b>consistent with USCG approved oil transfer procedures and pre transfer Declaration of Inspection (DOI).</b>”</p> <p><b>Response:</b> Comment noted, the department did not propose a substantive change to this provision, so this comment is outside the scope of the proposed regulations, no change made. Additionally, plan holders are required to comply with other applicable state and federal laws regardless of whether Article 4 provides an additional requirement to comply with them. The regulations in Article 4 do not supersede or invalidate other state and federal regulations that apply to plan holders.</p>
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28.	<p><b>Comment:</b> Numerous comments were received requesting changes to prevention credit requirements at 18 AAC 75.430, 432 and 438(d), and also requesting a review of how the department applies these requirements.</p> <p><b>Response:</b> Comments noted. The department considered comments received during public scoping recommending changes to prevention credits. Although minor adjustments to the prevention credit requirements were made for clarification only, the department did not propose substantive changes to prevention credit requirements, so these comments are outside the scope of the proposed regulations.</p>
29.	<p><b>Comment:</b> Revise 18 AAC 75.430(b): “Except for the requirements of 18 AAC 75.438(b)(1) and (2), 18 AAC 75.440, and 18 AAC 75.441, the department will consider and provide modifications to the response planning standards set out in 18 AAC 75.430 - 18 AAC 75.442 for a prevention measure that is in addition to those listed in 18 AAC 75.432 - 18 AAC 75.438, if the plan holder demonstrates [TO THE DEPARTMENT'S SATISFACTION] that the <del>proposed</del> measure reduces the potential size or risk of a discharge.”</p> <p><b>Response:</b> Thank you for your comment. The meaning of the regulation at 18 AAC 75.430(b) was not proposed to change. The comment suggests a change that does not clarify the text and may even alter the meaning of the regulation. No change.</p>
30.	<p><b>Comment:</b> Two comments were made regarding proposed 18 AAC 75.432(b)</p> <ul style="list-style-type: none"> <li>• “Clarification should be applied to the proposed amendment relating to vessels operating as storage for oil terminals. Are vessels used for storage at a facility subject to the 15% prevention credit for a storage tank or the 30% prevention credit available for vessels listed in 18 AAC 75.430(c)(1)-(2)?”</li> <li>• “Delete the language added/proposed. What exactly is a “vessel operating as oil terminal facility”? Please define and provide parameters when a VESSEL (barge, NTV or TV) is considered an OIL TERMINAL FACILITY. Under the new requirements, would the RPS of a 120,000 bbl. non crude barge be 120,000 bbl.? Why isn’t the 15% reduction (for calculating RPS of non-crude barge or tank vessel) utilized since these are VESSELS. Does DEC consider vessels moored offshore for transfer operations, to be a greater threat than a vessel transiting from port to port? Please provide examples (real world) of how a double-hulled vessel or barge will lose its entire cargo.”</li> </ul> <p><b>Response:</b> Comments noted. The definition in 18 AAC 75.990 and AS 46.04.900(14) for “oil terminal facility” answers the commenter’s question. The definition of “oil terminal facility” includes “a vessel, other than a nontank vessel, is considered an oil terminal facility only when it is used to make a ship-to-ship transfer of oil, and when it is traveling between the place of the ship-to-ship transfer of oil and an oil terminal facility[.]” A vessel that falls under the definition in AS 46.04.900(14) is subject to the requirements for an oil terminal facility, including the requirement at 18 AAC 75.430(c)(1). The proposed edit to 18 AAC 75.432(b) provides additional clarity and will be retained.</p>
31.	<p><b>Comment:</b> At 18 AAC 75.432(d)(1) and 18 AAC 75.436(c)(1), comments request that the department add citations to relevant regulations in Article 1:</p> <ul style="list-style-type: none"> <li>• “Revise 18 AAC 75.436(c)(1): Add relevant citation for alcohol and drug testing of key personnel <b><u>as required by 18 AAC 75.007(e)(2): 5 percent;</u></b>”</li> <li>• “Revise 18 AAC 75.432(d)(1): Add relevant citation alcohol and drug testing of key personnel <b><u>as required by 18 AAC 75.007(e): 5 percent;</u></b>”</li> </ul> <p><b>Response:</b> Comments noted. The regulations at 18 AAC 75.432(d)(1) and 436(c)(1) have not been proposed to change. No change.</p>

32.	<p><b>Comment:</b> 18 AAC 75.432(d)(2) states “...an operations training program with a professional organization or federal certification or licensing of program participants.” One commenter “requests clarification of what the ADEC considers a ‘professional organization’ for training purposes.”</p> <p><b>Response:</b> The department did not propose changes to the provision at 18 AAC 75.432(d)(2) regarding the prevention credit for an operations training program, so comments suggesting changes to that provision are outside the scope of the proposed regulations. For specific concerns relating to an individual plan, applicants should contact the appropriate department staff.</p>
33.	<p><b>Comment:</b> Several comments were received on the proposed language change at 18 AAC 75.432(d)(3) and similarly 18 AAC 75.436(c) voicing concerns about, and alternate language for, the added phrase “that automatically alarm at a central facility system that is continually monitored:”</p> <ul style="list-style-type: none"> <li>• “The Borough requests clarification as to what the ADEC considers ‘continually monitored.’ The Borough’s current leak detection monitoring program for its tank infrastructure consists of both an automated tank management system (TMS) located on its bulk fuel storage and distribution tanks, and routine personnel monitoring and visual inspection on its intermediate and day use tanks. It automated TMS is accessible at the specific facility as well as remotely, so that potential alarms are not only identified at the facility but can be accessed at the Public Works building in Utqiagvik. As the Borough’s automated TMS continuously records data with redundant local and remote monitoring capabilities, confirmation is requested that this meets the ‘continually monitored’ phrase of the proposed revised leak detection system definition.”</li> </ul> <p>Alternate language suggestions: “are continuously monitored and automatically alarm” or “with automatic alarm(s) and continuous monitoring.”</p> <p><b>Response:</b> Thank you for your comments. The department has replaced “central facility” with “facility control room” for added clarity in 18 AAC 75.432(d)(3) and 18 AAC 75.436(c)(3). In agreement with the comment, the department has also replaced the term “continually” with “continuously.” The plan holder must demonstrate to the department that their on-line leak detection system is monitored continuously to detect spills as quickly as possible.</p>
34.	<p><b>Comment:</b> A number of comments were made regarding the proposed changes at 18 AAC 75.432(d)(5), including editorial changes, and requests to consolidate or repeal the requirements.</p> <p><b>Response:</b> Thank you for your comments. For additional clarity, we have revised the regulation to specify belowground facility oil piping in 18 AAC 75.432(d)(5)(A). No additional changes.</p>
35.	<p><b>Comment:</b> Two suggestions were made by one commenter regarding 18 AAC 75.434:</p> <ul style="list-style-type: none"> <li>• “ADEC should consider separating oil exploration operations and oil production operations into two separate subsections.”</li> <li>• “The bulk of 18 AAC 75.434 is based on the potential for an uncontrolled well blowout from an oil exploration operation and not an oil well in production. Oil wells in production have additional safety features installed and in operation that oil wells in exploration may not have in place. A suggestion may be to reduce the twelve day RPS for production operations to a more realistic three day maximum flow rate”</li> </ul> <p><b>Response:</b> The department did not propose to restructure 18 AAC 75.434 in any way, nor did the department propose any substantive changes to 18 AAC 75.434. These comments, therefore, are outside the scope of the proposed regulations.</p>
36.	<p><b>Comment:</b> Two commenters requested changes to the response planning standard language and description for exploration facilities, specifically in 18 AAC 75.434(b) and 18 AAC 75.434(e).</p>

**Response:** These comments suggest changes, some of which are substantive, to language that the department did not propose to change. The comments, therefore, are outside the scope of the proposed regulation.

37. **Comment:** We received comments regarding use of planned voluntary ignition of a well blowout to adjust the RPS amount in 18 AAC 75.434(g). One comment noted that this is not a new provision, but stated they “oppose the regulation that would allow a plan holder to reduce their Response Planning Standard (RPS) for mechanical recovery by intending IWI operations. Instead, we urge that igniting a well be considered in the same way as in-situ burning; it is a response tool to be deployed with approval of the Alaska Regional Response Team and not similar to a spill prevention measure where ADEC may allow a reduced RPS.” Comments suggested alternative language for the section, including changing “for the purpose of adjusting the response planning standard volume” to “for the purpose of source control” or “as source control,” as well as additional editorial changes to the language.  
**Response:** The department’s proposed changes provide clarity; these changes have not substantively changed the meaning or applicability of this subsection. This regulation does not pre-authorize in-situ burning or intentional well ignition (IWI) for use during a response. This provision applies only to determining the response planning standard. The comments recommend substantive changes to 18 AAC 75.434(g), and are therefore outside the scope of the proposed regulation. No changes.

38. **Comment:** “Revise 18 AAC 75.442: Response planning standards for multiple operations. For **an oil discharge prevention and contingency plan** [FACILITY] **covering** [having] multiple facility types [MORE THAN ONE CATEGORY OF OPERATION] **the plan must include the applicable response planning standard volume for each** [that require [requires] an approved oil discharge prevention and contingency plan, the plan holder must plan to respond to a discharge of the applicable response planning standard volume for each separate] facility type in the plan [CATEGORY OF OPERATION AT THE FACILITY] as established under 18 AAC 75.430 - 18 AAC 75.440.”  
**Response:** Comment noted. The department did not propose any substantive change to this section. The comment suggests a substantive change, and is therefore beyond the scope of the proposed changes. No change.

18 AAC 75.447: Department Examination of New Technologies

39. **Comment:** Many general comments were received regarding the proposed repeal of 18 AAC 75.447, Department examination of new technologies. The main themes were requests that the department

- Does not diminish department emphasis on BAT use and review
- Retain the requirement for the department to hold the BAT conference
- Continue to meet the mandates of AS 46.04.030(e) in ensuring that spill response and prevention equipment remains Best Available Technology, and continue setting performance standards and examining new technologies as they become available
- Address how the department will work to meet the mandates of AS 46.04.030(e), especially with section 18 AAC 75.447 repealed

**Response:** Thank you for your comments and for sharing your concerns. The department is committed to ensuring regulated operators use best available technology to meet prevention and response readiness requirements. The department held several new technology conferences focusing on both prevention and response technologies. The conferences have not led the department to find that a specific prevention or response technology is best for all oil discharge prevention and contingency plan applicants outside of those codified in regulation. We ensure best available technology is used by codifying performance standards in 18 AAC 75, Article 1 for prevention requirements. Prevention performance standards that are codified in regulation may be updated after careful department and public review; most recently, codified standards for above ground storage tank design, construction, maintenance, and inspection were updated in 2021. We ensure best available technology is included in oil discharge prevention and

contingency plans by reviewing the plan to verify that codified standards are being met and that response technologies used by the applicant enable a response that meets the response planning standard for protection of environmentally sensitive areas and control, containment, and cleanup as established in statute and regulation. The department also ensures best available technology by requiring plan applicants to conduct a best available technology review for specific technologies that are not subject to response planning or performance standards specified in regulation. Specific technologies subject to best available technology analysis are identified in 18 AAC 75.452(a). Finally, repealing the regulation requiring the department to hold a new technology conference every five years does not restrict the department from researching prevention and response technology, finding a particular technology to be the best available should it determine a finding is appropriate, or from holding a technology conference in the future. No change.

18 AAC 75.448: General plan requirements

40. **Comment:** Three comments suggest alternate language for 18 AAC 75.448.

- Comment 1 and 2 recommend removing the phrase “of an oil discharge of any size” from 18 AAC 75.448 because ODPCPs should only address discharge sizes and volumes described in the response planning standard.
- Comment 3: One commenter recommended renaming section 18 AAC 75.448 to “General Content” or “General Requirements” and recommended that DEC “consider building this section with streamlined and summarized “approval criteria” from 18 AAC 75.445 instead of including that same verbiage scattered throughout 18 AAC 75.449 through 453” and including 18 AAC 75, Article 1 citations. Specifically, the comment recommended the following section title: “Oil discharge prevention and contingency plan, general content (or, requirements) and approval criteria, and recommend the following language to 18 AAC 75.448(a) “...The plan must contain enough information, analyses, supporting data, and documentation to demonstrate the plan holder's ability to meet the requirements of AS 46.04.030, AS 46.04.055(c)(2), 18 AAC 75.005 - 18 AAC 75.085, and 18 AAC 75.400 - 18 AAC 75.495.”

**Response:** Comments noted. The proposed addition of the phrase “of an oil discharge of any size” was determined to be unnecessary and has been removed from the language in 18 AAC 75.448(a). The department has added language at 18 AAC 75.448(b) to clarify the general requirements for the plan, including that the plan must identify the “greatest possible discharge that could occur at the facility or operation and the general procedures to respond to a discharge of that magnitude,” to align with current language in 18 AAC 75.430 and as is required by current regulations at 18 AAC 75.445(b). The comment about including Article 1 citations is addressed in response to comment #42 below. The section title has been revised.

41. **Comment:** 18 AAC 75.448(d)(3). A comment was submitted stating that the cross-reference table is reasonable in concept, but concerns were raised about the practicality of cross-reference tables for meeting both state and federal planning requirements. The commenter stated that some cross-reference tables do not lead to the correct information or require the reader to follow several subsequent references. The commenter requested the department require cross-reference tables to be limited to a single step so that readers can find the information they want to identify Article 4 information directly.

**Response:** Comment noted. The provision at proposed 18 AAC 75.448(d)(3) is carried over from current regulations at 18 AAC 75.425(d)(4). The department did not propose substantive changes to this provision, so comments recommending a substantive change are outside the scope of the proposed regulation. The adequacy of a cross-reference table is assessed on a case-by-case basis.

42.	<p><b>Comment:</b> Comments were made addressing citations in proposed section 18 AAC 75.448:</p> <ul style="list-style-type: none"> <li>• In 18 AAC 75.448(a), AS 46.055(c)(2) should be AS 46.04.055(c)(2)</li> <li>• Suggestion that the citations for Article 1 requirements, (18 AAC 75.005 - 18 AAC 75.085), be added following the citation for AS 46.04.055(c)(2).</li> <li>• At 18 AAC 75.448(c)(3), the citation for 18 AAC 15.010(b) is not correct.</li> </ul> <p><b>Response:</b> Thank you for your comments. The citation in 18 AAC 75.448(a) has been corrected to AS 46.04.055(c)(2). 18 AAC 75.450(a) specifies Part 2 of the plan must demonstrate that the applicant meets all applicable requirements of 18 AAC 75.005 - 18 AAC 75.085. Including Article 1 references in 18 AAC 75.448(a) is unnecessary and duplicative; this change was not made. Specific plan requirements relating to Article 1 are referenced in sections 18 AAC 75.450, 451, and 452 where applicable. We have removed the incorrect reference to 18 AAC 15.010.</p>
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18 AAC 75.449: Response Action Plan

43.	<p><b>Comment:</b> Comments suggest that the department avoid repeating requirements in the introductory language at 18 AAC 75.449(a). Additionally, commenters are worried that the language in 18 AAC 75.449(a) is overly broad and vague, and represents a “missed opportunity for ADEC to remove or better quantify.”</p> <p><b>Response:</b> Thank you for your comment. We have edited the proposed text to remove repetitive language. This does not change or diminish specific requirements that are detailed in the paragraphs under 18 AAC 75.449(a).</p>
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44.	<p><b>Comment:</b> Comments were made regarding the language in 18 AAC 75.449(a)(1), addressing how, when, and where the emergency action checklist must be available.</p> <p><b>Response:</b> Thank you for the comments. We have revised the regulation at 18 AAC 75.449(a)(1) to specify the checklist is to be “immediately available to response personnel while on duty.”</p>
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45.	<p><b>Comment:</b> Comments state that the new language in 18 AAC 75.449(a)(2)(B) regarding the requirement for the plan to contain contact information for “potentially impacted groups and others who may be called on to provide resources during the spill” is too broad, and the requirement is poorly defined. Comments recommend removing the new language and offer suggestions for re-writing. One comment suggests “If the department wishes for specific entities to be listed, this should be discussed as part of the pre-application consultation or the RFAI process.”</p> <p><b>Response:</b> Thank you for your comments. We agree that the purpose of immediate spill reporting required by this regulation is not for purposes of mobilizing all plan resources. We have revised the language to clarify the intent that immediate notification will include potentially impacted groups. Potentially impacted groups are unique to each discharge event, and it is not appropriate to provide a detailed list of groups in regulation.</p>
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46.	<p><b>Comment:</b> Revise 18 AAC 75.449(a)(3): “safety - based on applicable safety standards, a description of the <b>process</b> [<del>steps necessary</del>] to develop an incident-specific safety plan for conducting a response;”</p> <p><b>Response:</b> The proposed change is substantive. The department did not propose any changes to this provision, which is carried over from the current regulation at 18 AAC 75.425(e)(1)(C), so this comment is outside the scope of the proposed regulations.</p>
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47. **Comment:** Commenters recommend changes to the language in 18 AAC 75.449(a)(5), including removing language or consolidating the text of subparagraph 18 AAC 75.449(a)(5)(A) into 449(a)(5). Comments also express concern that the requirements in this paragraph do not become a response standard and suggests clarifying language: “The deployment strategies are neither a performance standard indication nor a guarantee of performance. Experience has shown that additional information and description will become a requirement and performance standard outside the scope and/or intent of the regulation.”

**Response:** The language in 18 AAC 75.449(a)(5)(B) is carried over from the current 18 AAC 75.425(e)(1)(E) and 18 AAC 75.445(c). The process of merging these requirements did not create a substantive change. Many of the suggested changes alter the meaning of the regulation. Comments suggesting substantive changes, including eliminating requirements for deployment strategies in the Response Action Plan, are therefore outside the scope of the proposed regulations. The department believes the regulations are clearer as proposed. The department notes that, consistent with statutes at AS 46.04.030(j), these regulations establish planning standards, not spill response performance standards. No changes.

48. **Comment:** 18 AAC 75.449(a)(6). Referencing the clause “...the response scenario must be usable as a general guide for a discharge of any size...,” a number of similar comments were made stating that the purpose of the scenarios is not to be a spill response guide, but rather to demonstrate the plan holder’s ability to contain, control, and recover the RPS volume. One comment noted, “Response scenarios are neither a performance standard indication nor a guarantee of performance outside the scope and/or intent of the regulation.”

Changes to the regulation language were suggested, including the following: “(6)... the response scenario must be usable as a general guide for a discharge of any size and must describe the discharge containment, control, **recovery, transfer, storage**, and cleanup actions to be taken under reasonably expected environmental conditions at the discharge location, and clearly demonstrate the strategies and procedures adopted to conduct and maintain an effective response, ~~and if the response scenario is for an exploration or production facility, must also meet the applicable requirements of (7) of this subsection;~~ if the information required by this subparagraph is contained in a separate document **developed by the department**, the plan holder, or the ~~plan holder’s~~ **oil spill** primary response action contractor identified in 18 AAC 75.451(i), the plan holder may incorporate the information by reference ~~upon receiving the department’s approval;~~ response strategies must be sufficient to meet the applicable response planning standard established under 18 AAC 75.430 – 18 AAC 75.442 for containment, control, recovery, transfer, storage, and cleanup within the specified time and under environmental conditions that might reasonably be expected to occur at the discharge site and must include”

**Response:** Thank you for your comments. Consistent with statutes at AS 46.04.030(j), these regulations establish planning standards, not spill response performance standards. The requirement that “the response scenario must be usable as a general guide for a discharge of any size,” is retained from the current regulation at 18 AAC 75.425(e)(1)(F) and will not be removed. The phrase “and if the response scenario is for an exploration or production facility, must also meet the applicable requirements of (7) of this subsection” has been removed, because 18 AAC 75.449(a)(7) already provides this requirement. The phrase “recovery, transfer, storage,” has been relocated. The phrase “primary response action contractor” has been corrected to read “oil spill primary response action contractor.” The department has determined that the other changes suggested here do not improve the clarity of the regulation and will not be incorporated.

49. **Comment:** 18 AAC 75.449(a)(6)(A). There were two related comments on language in this regulation.

- “18 AAC 75.449(a)(6)(A) [existing - 18 AAC 75.425(e)(1)(F)]. Amended. The response scenario must address the response planning standard. The phrase ‘that might reasonably be expected to occur’ is extraneous; ‘relevant environmental conditions’ is sufficient. ‘Spill trajectory’ is out of context here and should be paired with language in (B). Recommend revising as follows: (A) the spill discharge location, time of year, and time of day, the source and cause of the spill discharge, the quantity response planning standard volume identified in Part 5 of the plan under 18 AAC 75.453, and type of oil spilled, the relevant environmental conditions that might reasonably be expected to occur at the discharge site location, including weather, sea state, and visibility, and the spill trajectory;”
- “Revise 18 AAC 75.449(a)(6)(A): Use regulatory language; the scenario is for the RPS the discharge [spill] location, time of year, and time of day, the source and cause of the discharge [spill], the response planning standard volume identified in Part 5 of the plan under 18 AAC 75.453, [the quantity and] type of oil spilled, the relevant environmental conditions that might reasonably be expected to occur at the discharge site, including weather, sea state, and visibility, and the spill trajectory;”

**Response:** Comments noted. With the exception of the phrase “that might reasonably be expected to occur at the discharge site,” this language is retained from current regulations at 18 AAC 75.425(e)(1)(F). Comments recommending additional changes are outside the scope of the proposed regulation. The phrase “that might reasonably be expected to occur at the discharge site” is not extraneous. It is used in 18 AAC 75.449(a)(6), and it applies to 18 AAC 75.449(a)(6)(A); this phrase has been removed from 18 AAC 75.449(a)(6)(A) to avoid redundancy. The order of the requirements specified in 18 AAC 75.449(a)(6)(A) has been revised for clarity. No additional change.

50. **Comment:** Trajectories, 18 AAC 75.449(a)(6)(B). One commenter provided three comments to reorganize and consolidate information from 18 AAC 75.449(a)(6)(C) and (E) into a rewrite of 18 AAC 75.449(a)(6)(B): “Recommended revising as follows: (B) the discharge trajectory on land and on open water, and surveillance and tracking equipment and personnel used to forecast the trajectory and its expected points of shoreline contact; based on the trajectory, provide the expected timeline and description of response actions, describing response actions to be taken to stop the discharge and prevent its further spread;”

**Response:** Comments noted. The requirements for the response scenario in 18 AAC 75.449(a)(6) have been reviewed and revised for clarity and consistency. While paragraphs 449(a)(6)(B), (C), and (E) all address response planning and therefore may overlap in a general sense, they each focus on different aspects. Consolidation would not improve clarity.

51. **Comment:** 18 AAC 75.449(a)(6)(C). Two comments were made regarding the addition of the phrase “within the shortest possible time” at proposed 18 AAC 75.449(a)(6)(C), stating that the phrase is unnecessary and redundant since “all plan holders wish to stop discharges within the shortest possible time while taking measures to ensure personnel safety,” and that “this addition makes it seem as though safety of personnel should not be the highest priority.”

**Response:** Comment noted. The text in 18 AAC 75.449(a)(6) has been edited to include the statement that all response actions must be consistent with ensuring the safety of personnel.

52.	<p><b>Comment:</b> 18 AAC 75.449(a)(6)(D). A number of concerns were raised regarding the revised requirements at 18 AAC 75.449(a)(6)(D) including whether DEC has the authority to request this information, or the expertise to review fire control plans, and whether this is this DEC “overreach,” and that the information requested here may be sensitive or confidential. A number of comments request that this change not be adopted and/or suggest alternate language</p> <p><b>Response:</b> Comments noted. Procedures to prevent and control fire hazards are relevant to a plan holder’s ability to respond to a spill. Plan applicants who are concerned about sharing facility diagrams may request to have security sensitive information redacted from the public version of the plan, per statute at AS 40.25.120. Language has been reviewed and updated that fire control features must be included on the facility diagram under 18 AAC 75.449(a)(9). The extraneous phrase “all fire control plans must be compatible with applicable fire codes and industry standards” is removed. The revised regulation at 18 AAC 75.449(a)(6)(D) is the text retained from current regulations at 18 AAC 75.425(e)(1)(F)(ii).</p>
53.	<p><b>Comment:</b> “18 AAC 75.449(a)(6)(E) Scenarios describe equipment, personnel, strategies, and tactics for planning purposes only. Spill response operations including real-time surveillance and tracking are tailored to each actual event to reflect the conditions at the time of the spill.”</p> <p><b>Response:</b> Comment noted. Response strategies in the plan <u>do</u> include the procedures and methods identified in 18 AAC 75.449(a)(6)(E). A response to a real discharge event would use and adapt strategies as circumstances demand. No change.</p>
54.	<p><b>Comment:</b> Numerous comments were made about ESA protection requirements for the response scenario (proposed 18 AAC 75.449(a)(6)(F)), and information required in the supplemental information section (18 AAC 75.451(k)). Many comments express concerns about text that they mistakenly identified as new language at 18 AAC 75.449(a)(6)(F) for requirements to protect ESAs, and questioned the scope of the required protections for ESAs.</p> <p>Additional comments on 18 AAC 75.449(a)(6)(F) and 18 AAC 75.451(k) include the following:</p> <ul style="list-style-type: none"> <li>• Comments applauding stronger protections for ESAs developed in these regulations</li> <li>• Concern about overlap or redundancy of requirements in 18 AAC 75.449(a)(6)(F) with 18 AAC 75.451(k)</li> <li>• Concern that “the proposed language suggests that each site must have dedicated response resources available to the plan holder.”</li> <li>• Concern that this planning standard will become a performance standard</li> <li>• Language suggestions, including removing of the phrase “or operation” and striking the word “mapped” from 18 AAC 75.451(k)</li> <li>• The suggestion that “If the area is identified as a sensitive area by ADEC, the appropriate mechanism to address incorporating information into a plan is during a review period as a request for additional information, not as a condition of approval.”</li> <li>• Suggestion to remove the requirement that “areas identified in the plan must include areas added by the department as a condition of plan approval”</li> </ul> <p><b>Response:</b> The provision at proposed 18 AAC 75 449(a)(6)(F) combines plan content requirements from current 18 AAC 75.425(e)(1)(F)(v) and related approval criteria from 18 AAC 75.445(d)(4), and is not a new requirement. This provision describes how the response scenario must account for protection of ESAs. The requirement at proposed 18 AAC 75.451(k) is retained from current regulations at 18 AAC 75.425(e)(3)(J) with the addition of the word “mapped” and updating the reference to “Area Contingency Plans” from “applicable subarea contingency plan”</p> <p>The department notes that, despite the concerns voiced in the comments, currently approved plans are required to incorporate the information required by regulations at 18 AAC 75.425(e)(1)(F)(v), 18 AAC 75.425(e)(3)(J), and 18 AAC 75.445(d)(4). Although the applicant must list potentially impacted ESAs and areas of public concern under 18 AAC 75.451(k), the ability to protect ESAs and areas of concern is demonstrated in the response scenario under 18 AAC 75.449(a)(6)(F). Regulations at 18 AAC 75.451(k)</p>

and 18 AAC 75.449(a)(6)(F) are not redundant. Consistent with statutes at AS 46.04.030(j), these regulations establish planning standards, not spill response performance standards.

55. Comments were received regarding the requirement to plan for lightering at 18 AAC 75.449(a)(6)(I):
- Comment:**
- “Lightering details will be developed after consultation with naval architect and salvage master and are performed by the vessels Salvage and Marine Fire Fighting provider as required under federal requirements.”
  - “The language ‘with enough detail’ is very subjective and should not be adopted. Information on response equipment in Part 3 would provide information that equipment and personnel are available for lightering. The purpose of a response scenario is to ‘demonstrate’ access and capability of personnel and equipment; stating that requirement here is unnecessary. Recommend revising as follows: (I) procedures for lightering, transfer, and storage of **lightered oil within the shortest possible time** with enough detail to demonstrate that there is access to sufficient lightering equipment and personnel **and procedures** to transfer all oil from damaged tanks and from to undamaged tanks if the risk of an additional discharge is present; the plan must provide for the start and completion of lightering within the shortest possible time, consistent with ensuring the safety of personnel;
  - “It should be noted by DEC, that the shortest possible time may not be the safest or best response at the time. The health and safety of the response team is always the first priority.”
  - “The scenarios describe equipment, personnel, strategies, and tactics for planning purposes only and are neither a performance standard indication nor a guarantee of performance. Experience has shown that including the shortest possible time to lighter will become a performance standard.”
- Response:** Comments noted. Regulations in Article 4 do not supersede or invalidate other state and federal regulations that apply to plan holders or prevent the plan holder from consulting with other entities. Language has been revised to remove the phrase “with enough detail to.” The phrase “consistent with ensuring the safety of personnel” has been moved to the parent paragraph at 18 AAC 75.449(a)(6) to emphasize that all response actions must be consistent with ensuring the safety of personnel. Consistent with statutes at AS 46.04.030(j), these regulations establish planning standards, not spill response performance standards. The remaining language suggestions are not appropriate; no additional changes.

56. **Comment:** Comments were received regarding requirements for the storage and transfer of recovered oil and oily water at 18 AAC 75.449(a)(6)(J) as follows:
- language suggestions, including replacing the phrase “more secure” with “long-term,” or “a waste management site for disposal” Comment: “The phrase ‘more secure storage’ is undefined and subjective; onsite temporary storage typically is robust and ‘secure’ so as not to pose a spill risk.”
  - request: “Clarification on the process and control of estimating the amount and quality of recovered fluids is required.”
  - Comments that transfer and storage is a “long-term” consideration (and not relevant to the 72 hour timeline the scenario), it is something the plan holder expects to be taken care of by the PRAC/OSRO, that “operators can't be held to this level of detail over time because spill conditions can change, spill components can change, disposal facilities can change, etc,” “scenarios describe equipment, personnel, strategies, and tactics for planning purposes only,” “including operating procedures into the response scenarios creates additional administrative burden”
  - One comment requested clarity regarding oversight in estimating the amount of oil recovered for the purpose of calculations for civil penalty assessments under AS 46.03.759(b)
  - Comment: “ADEC should consider incorporating information on decant procedures from proposed 18 AAC 75.449(a)(6)(L). The intent of the response scenario is to demonstrate capability to cleanup the response planning standard volume of oil under 18 AAC 75.430 - 18 AAC 75.442; therefore it is unnecessary to repeat that requirement here (if language from 18 AAC 75.445(d)(7) is incorporated).”

- “Recovery of oil discharged to water should consider the volume (e.g., percentage) determined in proposed 18 AAC 75.453.... Recommend revising as follows: (J) procedures for transfer and storage of recovered oil and oily water, including methods for estimating the amount of recovered oil and procedures for obtaining required permits or authorizations for decanting.; In addition, for on-water recovery of the percentage of the response planning standard volume that will reach open water as determined in 18 AAC 75.453, ~~this includes describe~~ procedures for offloading and transfer of oil and ~~oil- oily water mixture~~ to shore-side storage; for on-land recovery, ~~this includes describe~~ procedures for transfer from onsite temporary storage to ~~more secure storage~~ a waste management site for disposal;”

**Response:** Thank you for your comments. We have revised the regulation to better merge the applicable requirements from current regulations at 18 AAC 75.425(e)(1)(F)(ix) and approval criteria in 18 AAC 75.445(d)(7) for required demonstration of the procedures to transfer and store recovered oil and oily liquids. In addition:

- The phrase “more secure storage” is retained for on-land storage. Examples of temporary on-site storage include fast tanks or vacuum trucks. Examples of more secure storage include regulated storage tanks or tanker trucks. This requirement should not be confused with longer-term non-emergency response decisions regarding ultimate disposal of recovered oil.
- Decanting procedures are not allowed for purpose of demonstrating the ability to meet the response planning standards, and are not included in this subparagraph for purposes of demonstrating the plan applicant’s strategies for transfer and storage of recovered oil and oily liquids. Please see 18 AAC 75.449(a)(6)(L) for requirements for plan applicants who intend to request authorization to decant during spill response.
- The plan applicant is required to demonstrate their method of estimating the amount of recovered fluid. The recovered fluids estimate includes water as well as oil for purposes of planning for adequate storage. We disagree with the request to add information about third-party or state oversight to this subparagraph.
- Consistent with statutes at AS 46.04.030(l), these regulations establish planning standards, not spill response performance standards.
- This subparagraph describes actions specific to the response planning standard scenario. The response planning standard volumes for on-water and on-land apply as included in Part 5 - Response Planning Standards.

57.

**Comment:** Comments and language suggestions were made regarding proposed section 18 AAC 75.449(a)(6)(K), including the following:

- The plan holder cannot know how long it will take agencies to give approvals, so the timeline is out of the control of the plan applicant
- “with enough detail to” is ambiguous
- Concern that this creates a performance standard, or is more than a planning standard
- Concern that the proposed regulation reaches beyond the corresponding portions of 18 AAC 75.425 and 18 AAC 75.445 in requiring disposal procedures for solid wastes in addition to liquid

**Response:** Thank you for your comments. We have revised the regulation remove unnecessary language and better merge the applicable requirements from current regulations at 18 AAC 75.425(e)(1)(F)(x) and approval criteria in 18 AAC 75.445(d)(7) for temporary storage and ultimate disposal for oily, sanitary, and solid wastes, including clarifying that the timeline for obtaining necessary permits is for planning the application process. Procedures for temporary storage and ultimate disposal of sanitary and solid wastes are essential for an uninterrupted response, and it is not appropriate to remove this requirement from the regulations. Consistent with statutes at AS 46.04.030(l), these regulations establish planning standards, not spill response performance standards.

58. **Comment:** Several comments were received regarding the proposed requirements at 18 AAC 75.449(a)(6)(L). Many of the comments focused on removing the information in this section:

- Suggestions to consolidate the information in 18 AAC 75.449(a)(6)(L) into 18 AAC 75.449(a)(6)(J) or (K).
- Comments that the information in (L) is duplicative of (K): “This new proposed requirement for decanting procedures would be addressed in new proposed 18 AAC 75.449(a)(6)(K). Decanting activities are performed under temporary storage and disposal actions during a response and operational decisions for decanting, including authorizations, are always incident specific and must be determined at the time of the response. Therefore, a specific decanting procedure description adds little value and simply adds to the ‘bulk’ of the regulations”
- Requests for more specific information to be added to the regulations text regarding the form supplied by the department, and regarding the procedure for requesting authorization to decant.

**Response:** Regulations at 18 AAC 75.449(a)(6)(J) and (K) identify required procedures and detailed information for the transfer and storage of recovered oil and oily water that must be part of all ODPCPs. In contrast, 18 AAC 75.449(a)(6)(L) is required only for applicants that intend to request permission to use decanting strategies during a spill response. The subparagraphs are appropriately separated, and these requirements will not be consolidated.

Regulations do not require (or even allow) decanting procedures to be included in 18 AAC 75.449(a)(6)(J) or (K). The scenario may indicate when the plan holder will apply for a decanting permit under (L), but the decanting strategy itself may not be used to modify the procedures required under (J) and (K) for recovery and storage of recovered oil and oily water in the planned response scenario. Decanting guidance and the application form are on the department's website, and information about accessing the decanting authorization form is appropriately located in the Editor’s note for section 18 AAC 75.449. No change.

59. **Comment:** Several comments were received regarding section 18 AAC 75.449(a)(6)(M) and the Wildlife Protection Guidelines (WPG), both in support of the change and of incorporating the WPG and also with suggestions to change or remove requirements. Comments expressed concern that the WPG have not been correctly incorporated by reference. Some comments suggest removing descriptive language and simply requiring plan holders to follow the WPG. Some comments recommend requiring plan applicants to follow WPG or equivalent.

**Response:** Thank you for your comments. The department has revised the language in 18 AAC 75.449(a)(6)(M) to specify that ODPCPs must apply the Alaska Regional Response Team's Wildlife Protection Guidelines (WPG) as applicable to their location and potential discharge impact area, or if approved by the department, may apply alternative procedures and methods to protect wildlife. The department has adopted the WPG by reference to ensure there is no confusion that the WPG is the department's basis for evaluation of wildlife protection and recovery methods and procedures required by this subparagraph. It is necessary to specify the areas to be addressed (minimizing wildlife contamination and secondary contamination; capture, cleaning, rehabilitation, and release; protection and recovery) in the regulation. Please also see response to comments for 18 AAC 75.451(g) where we have added language to specify that the equipment required to implement the wildlife protection and recovery plan must be included in Supplemental Information, Part 3 of the ODPCP.

60. **Comment:** 18 AAC 75.449(a)(6)(N). Three comments suggest additional details to strengthen the restoration requirements in this regulation. One comment states a concern that requirements in scenarios become performance standards in the future.

**Response:** Comments noted. The department did not propose any changes to this provision, which is located in current regulations at 18 AAC 75.425(e)(1)(F)(xii) and has been transferred to 18 AAC 75.449(a)(6)(N). Comments that recommend substantive changes are therefore outside the scope of the proposed regulations. Consistent with statutes at AS 46.04.030(j), these regulations establish planning standards, not spill response performance standards. No change.

61.	<p><b>Comment:</b> Numerous comments were received regarding additional scenario requirements at 18 AAC 75.449(a)(6)(O):</p> <ul style="list-style-type: none"> <li>• Comments noted that the regulations do not provide a standard for when, or how many additional scenarios might be required, or threshold for requiring them, and that the regulations language, including the phrase “seasonal conditions,” is too vague.</li> <li>• Requiring additional scenarios is burdensome, or that this “new requirement” would increase the burden on plan holders.</li> <li>• Commenters suggest removing the requirement or rewording it to make clearer where the goalposts are. Several commenters suggest maintaining the phrase “if required by the department” used in the current regulations. One comment states that the current language is clearer than the proposed text.</li> </ul> <p><b>Response:</b> Thank you for your comments. 18 AAC 75.449(a)(6)(O) has been edited to include the phrase “if required by the department” as recommended by several commenters. We have not removed the requirement for additional response strategies. In response to comments, we considered whether to retain the new language “...including time of year, spills of varying source and size, and weather limitations” as specific components of seasonal conditions. We have removed “weather limitations” because realistic maximum response operating limitation requirements in 18 AAC 75.451(e) already address planning for weather limitations. The remainder of the phrase provides context, and is retained.</p>
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62.	<p><b>Comment:</b> Comments were received regarding language in 18 AAC 75.449(a)(7):</p> <ul style="list-style-type: none"> <li>• Revise 18 AAC 75.449(a)(7): “if the facility is an exploration or production facility, <del>[a response scenario that complies with (6) of this subsection, and in addition]</del>”</li> <li>• Comment that the language in this paragraph is repetitive, and that the department should repeal this existing requirement.</li> </ul> <p><b>Response:</b> Comments noted. We have revised the language in 18 AAC 75.449(a)(7) for clarity. The requirements at proposed 18 AAC 75.449(a)(7) are carried over from current regulations at 18 AAC 75.425(e)(1)(I) and the department has not proposed significant changes to these requirements. Removing 18 AAC 75.449(a)(7) entirely is outside the scope of the proposed regulations.</p>
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63.	<p><b>Comment:</b> Comments were made regarding 18 AAC 75.449(a)(7)(A) (current 18 AAC 75.445(d)(2)(A)):</p> <ul style="list-style-type: none"> <li>• Revise 18 AAC 75.449(a)(7)(A): “This summary should be moved to 18 AAC 75.045, Operating requirements for exploration and production facilities. Use RPS requirements (18 AAC 75.434(b) or 18 AAC 75.434(e) to determine timeframe for well control”</li> <li>• “The words ‘15 days’ should be removed because provisions in 18 AAC 75.434(b) and (e) may allow for a shorter duration for a blowout. Recommend repealing this existing requirement and withdrawing the proposed changes. If adopted, recommend revising as follows: (A) a summary of planned methods, equipment, logistics, and time frames proposed to be employed to control a well blowout <del>[within 15 days]</del> <b>in the time set out in 18 AAC 75.453 under 18 AAC 75.434(b) for an exploration facility or 18 AAC 75.434(e) for a production facility;</b>”</li> </ul> <p><b>Response:</b> Thank you for your comments. The language in 18 AAC 75.449(a)(7)(A) is carried over from 18 AAC 75.425(e)(1)(I) and 18 AAC 75.445(d)(2) without proposed substantive changes. These comments are therefore outside the scope of the proposed regulations.</p>
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64.	<p><b>Comment:</b> 18 AAC 75.449(a)(7)(B). Commenters note that the Alaska Oil and Gas Conservation Commission has not yet formulated regulations for blowout contingency plans at 20 AAC 25, and therefore the changes to response scenario requirements at 18 AAC 75.449(a)(7)(B) pertaining to blowout contingency plan do not make sense and should be reversed.</p> <p>Additionally, one commenter writes “...as part of the information submitted to AOGCC when applying for an Application for Permit to Drill (APD, 20 AAC 25.005), primary and secondary means of well control (20 AAC.25.033 - .037) are included in the application. The APD does not require a blowout contingency plan. ADEC should not imply, suggest, or express that AOGCC or 20 AAC 25 require a blowout contingency plan. Reference to the non-existent AOGCC regulation must be removed. This proposed requirement does not align with current and practical well planning requirements already appropriately and well-managed by AOGCC (and BLM or BSEE on federal leases). Each well drilled is unique, which is why the AOGCC (and BLM or BSEE on federal leases) require individual permit applications (e.g., APD). Methods for primary and secondary well control are operational processes and procedures that are planned for and implemented during well drilling. Response actions or ‘plans’ following an uncontrolled well blowout would be described in a plan's response scenario for a well blowout and managed under an incident command system, as required. In that respect, an oil discharge prevention and contingency plan, in its entirety, is essentially a ‘blowout contingency plan.’ Additionally, ADEC does not have qualifications or expertise to determine if well drilling plans are adequate. Assigning additional requirements and responsibility to AOGCC to oversee other plans is inappropriate and provides no real benefit to environmental protection or reduction in risk. Recommend repealing this requirement in existing regulations at 18 AAC 75.425(e)(1)(I) and 18 AAC 75.445(d)(2) and withdrawing this new proposed requirement.”</p> <p><b>Response:</b> Thank you for your comments. The department has revised 18 AAC 75.449(a)(7)(B) by removing the language “...and that the well blowout contingency plan summary provided in the plan is aligned with the blowout contingency plan approved under 20 AAC 25.XXX.” The final rule retains the requirements relating to blowout contingency plans in current regulations.</p>
65.	<p><b>Comment:</b> One comment suggests the following addition to the proposed regulations at 18 AAC 75.449(a)(7)(B): “...the department may consult with the Alaska Oil and Gas Conservation Commission, the Department of Natural Resources, (in Cook Inlet, CIRCAC) or other agencies...”</p> <p><b>Response:</b> Thank you for your comment. All public stakeholders may comment on ODPCP applications, including source control procedures included in the Response Action Plan (Part 1). We have determined that it is not appropriate to add Cook Inlet Regional Citizens' Advisory Council to the list of entities the department may consult with concerning the adequacy of the well blowout contingency plan.</p>
66.	<p><b>Comment:</b> Proposed 18 AAC 75.449(a)(7)(C) (current 18 AAC 75.425(e)(1)(I)): “Plan holders should have the flexibility to utilize whichever deposition or trajectory model they chose and that's appropriate to their exploration or production facility. ADEC approval of plans constitutes ‘department approval.’ Recommend repealing this existing requirement and withdrawing the proposed changes. If adopted, recommend revising as follows: (C) a plan holder may use for development of a response scenario the July 1997 S.L. Ross oil deposition model for surface oil well blowouts, or another appropriate oil deposition model approved by the department for surface oil well blowouts;”</p> <p><b>Response:</b> 18 AAC 75.449(a)(7) retains the same, verbatim, well blowout deposition requirement in current regulation at 18 AAC 75.425(e)(1)(I). This comment is therefore beyond the scope of the proposed regulation. Plan holders already have the flexibility that the comment seeks: 18 AAC 75.449(a)(7)(C) provides that plan holders “may use... [the S.L. Ross model]... or another oil deposition model... .” Plan holders should coordinate with department plan review staff prior to submitting their plan, for example, during the pre-application consultation meeting, if they wish to use a different model. No change.</p>



67.	<p><b>Comment:</b> Comments were made regarding the requirements at proposed 18 AAC 75.449(a)(7)(D):</p> <ul style="list-style-type: none"> <li>• Comments state that some exploration facilities only operate in one season, and so should not be required to submit two scenarios.</li> <li>• Comment asks why only exploration and production facilities are required to have summer and winter scenarios.</li> <li>• Comment suggests that “Requirements for provisions and other response methods or procedures to address seasonal and environmental limitations on a response are already provided in proposed sections 18 AAC 75.449(a)(5)(A), .451(e), and .451(g)(3).”</li> <li>• Comment suggests repeal of the provision at 18 AAC 75.449(a)(7)(D).</li> </ul> <p><b>Response:</b> Thank you for your comments. The department reconsidered this regulation and has reinstated the current language, adding back “if required by the department,” to allow flexibility. The requirements in 18 AAC 75.449(a)(5)(A), 18 AAC 75.451(e), or 18 AAC 74.451(g)(3) are not equivalent to the provision in 18 AAC 75.449(a)(7)(D) for a response scenario for the applicable response planning standard volume under typical summer and winter conditions. The requirement is retained as modified from the initial proposed revision.</p>
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68.	<p><b>Comment:</b> One commenter made comments regarding the language at 18 AAC 75.449(a)(7)(E):</p> <ul style="list-style-type: none"> <li>• “This language is already incorporated into proposed new paragraph 18 AAC 75.449(a)(6). 18 AAC 75.449(a)(7) should only address requirements for exploration and production facilities that are in addition to 18 AAC 75.449(a)(6).”</li> <li>• “ADEC should remove this requirement because it is already made applicable to exploration and production facilities in an earlier section.”</li> <li>• “The requirement to ‘receive the department's approval’ to incorporate information required by this subparagraph that is contained in a separate document should be removed. ADEC approval of plans constitutes ‘department approval.’” “The phrase ‘for the purposes of this subsection’ is a remnant from the existing language copied here and should be removed.”</li> <li>• “Recommend repealing this existing requirement and withdrawing the proposed changes. If adopted, recommend revising as follows: (E) if the information required by this section is contained within a separate document developed by the department, plan holder, or the plan holder's primary response action contractor identified in 18 AAC 75.451(i) <del>the plan holder may incorporate the information by reference upon receiving the department's approval; for purposes of this subsection;</del>”</li> </ul> <p><b>Response:</b> Thank you for your comments. The department has modified 18 AAC 75.449(a)(7)(E) to clarify that the requirements are specific to paragraph (7) and has otherwise retained the proposed language. Plan holders wanting to incorporate the information required by 18 AAC 75.449(a)(7) by reference must ask for, and obtain, the department’s permission to do so. Separate documents that are referenced using the provision at 18 AAC 75.449(a)(7)(E) are still subject to public review.</p>
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69.	<p><b>Comment:</b> Three commenters made comments on requirements for nonmechanical response options at 18 AAC 75.449(a)(8):</p> <ul style="list-style-type: none"> <li>• “The information under entire proposed new section 18 AAC 75.449(a)(8) is also required in Part 3 under proposed new section 18 AAC 75.451(e)(4). Part 1 should focus on response actions and techniques only, not additional or supplemental information.”</li> <li>• Comments suggest removing the requirement at 18 AAC 75.449(a)(8), or moving information from the subparagraphs of 18 AAC 75.449(a)(8) into the supplemental information subsection at 18 AAC 75.451(e) and using alternative language in this section: “nonmechanical response options - <b><u>in plans proposing</u></b> [WHICH PROPOSE] the use of dispersants, in situ burning, or other nonmechanical response techniques during periods when environmental conditions or other factors limit [THE] use of mechanical spill response methods, <b><u>the scenario</u></b> must include <b><u>a description of how the nonmechanical response options will be implemented, including a description of required equipment and personnel;</u></b>”</li> <li>• One comment was made in support of the content in 18 AAC 75.449(a)(8)(G): “We support the proposed addition of the text, ‘... a plan for protecting environmentally sensitive areas and areas of public concern identified in 18 AAC 75.451(k), and the public from adverse effects of the nonmechanical response option’....Provides clear guidance to contingency plan holders about the planning standards for the protection of environmentally sensitive areas, areas of public concern, and the public during the use of nonmechanical response methods (i.e., dispersant use or in situ burning).”</li> </ul> <p><b>Response:</b> Thank you for your comments. We have retained portions of the proposed regulations in 18 AAC 75.449(a)(8) that belong in the response action plan. We have relocated portions of the proposed regulation that are better suited to the supplemental information section to 18 AAC 75.451(e)(4). In doing so, we have removed the duplicative reference to 18 AAC 75.449(a)(8) from 18 AAC 75.451(e)(4). Repetitive language in 18 AAC 75.449(a)(8)(C) has been removed. The phrase “complete application” is revised to “complete sample application.” Suggestions for further revision would not improve clarity and were not incorporated.</p>
70.	<p><b>Comment:</b> One commenter suggested that sections 18 AAC 75.449(a)(8)(E)-(G) “should incorporate and reference the Alaska Regional Plan August 2018 - Annexes III-IV; Annex discusses permits and approvals for nonmechanical options,... describe specific procedures for protection of public health and safety when nonmechanical tactics are used.”</p> <p><b>Response:</b> Thank you for your comment. The proposed regulations do require contingency plans to include a plan for protection of the public, areas of public concern, and environmentally sensitive areas from adverse effects of nonmechanical response options. The Alaska Regional Plan annexes will not be incorporated or referenced. Please note that the provisions 18 AAC 75.449(a)(8)(E) and (F) are located at 18 AAC 75.451(e)(4)(B) and (C) in the final regulation package, and the provision at 18 AAC 75.449(a)(8)(G) is now 18 AAC 75.449(a)(8)(D).</p>
71.	<p><b>Comment:</b> Two similar comments were received regarding the timeline for application of permits in 18 AAC 75.449(a)(8)(F), expressing the concern that the timeline for permit approval is outside the plan holder’s control.</p> <p><b>Response:</b> The regulations at proposed 18 AAC 75.449(a)(8)(E) and (F) have been clarified and relocated to the Supplemental Information section at 18 AAC 75.451(e)(4)(B) and (C). The requirement is to provide the expected timeline for permit approval for planning purposes, not to dictate actions during a response.</p>
72.	<p><b>Comment:</b> At 18 AAC 75.449(a)(9), commenters request that the phrase “drip pans and drainage of drip pans” be replaced by the phrase “containment areas.”</p> <p><b>Response:</b> We did not propose a substantive change to this provision, so this comment is outside the scope of the proposed regulations. No change.</p>

73.	<p><b>Comment:</b> At 18 AAC 75.430(a), 18 AAC 75.449(a) and 18 AAC 75.449(a)(10), a number of commenters suggest removal of the requirement to identify the maximum possible discharge that could occur, and general procedures for responding to this maximum possible discharge.</p> <ul style="list-style-type: none"> <li>• Comments state that the use of “maximum possible discharge” in these regulations is a new requirement, and suggest that it be replaced with “response planning standard volume.”</li> <li>• Comments suggest removing duplication of language from 18 AAC 75.449(a)(10) in the text of 18 AAC 75.449(a).</li> <li>• One comment equates the “maximum possible discharge” in 18 AAC 75.449(a)(10) with “RMOD” defined at AS 46.04.030(r)(3), and states that the RMOD volume may not be greater than the RPS volume; another suggests replacing the phrase “maximum possible discharge” with “realistic maximum oil discharge” as defined in statute.</li> <li>• Commenters request a definition of “maximum possible discharge,” and guidelines for the calculation thereof.</li> <li>• One comment states “The purpose of the scenarios is not to be a guide but rather to demonstrate the ability to contain, control, and recover the RPS volume. The use of the scenarios for a general response guide is not what was originally intended. This section should be revised.”</li> <li>• A number of comments have been made about the location of the information required by 18 AAC 75.449(a)(10): Comments suggest that the requested information should be provided in other parts of the plan, and that requiring it in the prescribed location is an “Administrative change with potential to require more repeated information that does not improve ability to respond to a spill”</li> </ul> <p><b>Response:</b> The requirement for the plan to include general procedures to respond to a “maximum possible discharge” is currently located in 18 AAC 75.445(b), and it is not new. It is distinct from the realistic maximum oil discharge (RMOD) defined at AS 46.04.030(r)(3), and from “response planning standard volume.” We note that general procedures for responding to the greatest possible discharge volume should not be confused with the specific response scenario requirements. The department has added specificity of where and how this information should be included in the plan. For clarity and consistency with the language used in 18 AAC 75.430, the phrase “maximum possible discharge” has been changed to “greatest possible discharge.” The department has chosen not to define “greatest possible discharge;” the greatest possible discharge is dependent on local factors at each facility. Duplicative language has been removed from 18 AAC 75.449(a). The regulation text has been revised to specify general requirements in section 18 AAC 75.448, general procedure requirements in 18 AAC 75.449(a)(10), and additional required resource information in section 18 AAC 75.451(j). No additional changes.</p>
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74.	<p>Two comments were made on the requirements in 18 AAC 75.449(b) regarding the feasibility of providing information requested in the regulation.</p> <p><b>Comment 1:</b> “The stated ‘summer’ weather timeframe of May through October is not ‘summer’ for [the commenter]. Typical summer weather for [the commenter’s locale] is from July through September. Similarly, typical winter weather for [the commenter’s locale] is not November through to April, but rather is October through June. As such [the commenter] is requesting that allowances be available, when presenting the required data, to represent what is summer and winter in the actual areas of operations, rather than a predefined and potentially incompatible timeframe.”</p> <p>“449(10)(b) (1) and (2) also require the predominant wind directions to be depicted by a wind rose diagram. This is overly prescriptive and forces a plan holder into including information in a manner that may not be in readily usable format for the responder. Specifying the exact format in which information is portrayed forces plan holders to adopt methodologies that hinder the plan being ‘useable as a working plan’ for the responders. [The commenter] recommends allowing additional graphical representations (e.g., bar graphs, scatter plot etc.) for wind direction.”</p>
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**Comment 2:** “Wind roses data is not available throughout Alaska and where it is available it’s from landbased weather stations. Operators are not capable of developing the wind roses themselves. Perhaps just adding average wind speed and direction data to the temperature/precipitation (weather) table. Additionally, wind speed and direction are usually addressed in the scenario description and response.”  
**Response:** The department did not propose a substantive change these provisions, which are currently located in 18 AAC 75.425(e)(1)(I), so these comments are outside the scope of the proposed regulations. The department has allowed operators to use weather data from an appropriate nearby location to construct the wind rose. Wind rose data is for planning purposes when developing response scenarios; a real response would consider the current and forecasted weather conditions. The time frame used to identify “typical summer” and “typical winter” conditions may not perfectly match the operational season for all plan holders, but it still provides a reasonable seasonal average for planning purposes.

18 AAC 75.450: Prevention Plan

75. **Comment:** Comments were received with suggestions for restructuring 18 AAC 75.450(a) for clarity, including replacing specific requirements with references to related requirements in Article 1.  
**Response:** Thank you for your comments. We have removed the redundant reference in 18 AAC 75.450(a) to “applicable requirements of 18 AAC 75.005-18 AAC 75.085.” The department has determined that the other language suggestions do not add additional clarity. No additional changes.

76. **Comment:** 18 AAC 75.450(a). A plan holder recommended that this regulation explicitly state criteria or parameters for “other factors” or “discharge history” to be considered.  
**Response:** Thank you for your comment. We have revised language in 18 AAC 75.450(b)(4) to better reflect the factors that must be incorporated into the prevention program described in Part 2 of the ODPCP.

77. **Comment:** 18 AAC 75.450(b)(1). Several comments were received on this regulation. One comment recommended withdrawing the requirement in this regulation, stating that it is redundant with requirements in Article 1. Other comments requested adding back specific references to Article 1 requirements, and requested that the department “confirm that the programs in former .425(e)(2)(A)(i)-(iii) are covered by the proposed language at 75.450(b)(1).”  
**Response:** Thank you for your comments. Requiring a description of how the operator complies with Article 1 is not redundant with the requirements in Article 1. The department has revised the language in 18 AAC 75.450(b) to clarify that the programs in former 18 AAC 75.425(e)(2)(A)(i)-(iii) are included in the prevention plan requirements.

78. **Comment:** 18 AAC 75.450(b)(2). A commenter stated that the discharge volume threshold of 55 gallons that establishes the requirement to list all discharges that have occurred at a facility in the Prevention Section of the ODPCP is inconsistent with other department oil release reporting requirements, except those to impermeable secondary containment areas. The commenter recommended discharge history threshold be reduced to align with discharge reporting requirements in 18 AAC 75.300 for any release of oil to water and any release of oil to land of 10 gallons or more.  
**Response:** Comment noted. The requirement at proposed 18 AAC 75.450(b)(2) is retained from current regulations at 18 AAC 75.425(e)(2)(B). The department did not propose a substantive change to this provision, so this comment is outside the scope of the proposed regulations. No change.

79. **Comment:** 18 AAC 75.450(b)(2). Numerous comments express concern over the length of time for which the discharge history must be provided, and suggest limiting it to 5 or 10 years, rather than the length of time the facility has been in operation. Comments also provide some language suggestions for 18 AAC 75.450(b)(2).

	<p><b>Response:</b> Comments noted. The requirement at proposed 18 AAC 75.450(b)(2) is retained from current regulations at 18 AAC 75.425(e)(2)(B). The department did not propose substantive changes to these provisions, so these comments are outside the scope of the proposed regulations. No change.</p>
80.	<p><b>Comment:</b> 18 AAC 75.450(b)(2)(A). Two commenters recommended that all categories of discharge history information should be incorporated into one paragraph, and that the regulation should add the date, location, and type of oil: "...the <b>date, location, type of oil</b>, source, cause, and <b>volume</b> [<del>amount</del>] of each discharge..."</p> <p><b>Response:</b> Comment noted. The requirement at 18 AAC 75.450(b)(2)(a) is retained without substantive changes from current regulations at 18 AAC 75.425(e)(2)(B)(i), so comments recommending a substantive change are beyond the scope of the proposed regulations. No change.</p>
81.	<p><b>Comment:</b> 18 AAC 75.450(b)(2)(C). Several comments stated, "This section is similar to 18 AAC 75.450(b)(3) and should be removed."</p> <p><b>Response:</b> Comments noted. The requirements at 18 AAC 75.450(b)(2)(C) and 18 AAC 75.450(b)(3) are distinct. These requirements are retained from current regulations at 18 AAC 75.425(e)(2)(B)(iii) and 18 AAC 75.425(e)(2)(C) respectively, without any substantive changes, so any comment now recommending a substantive change is beyond the scope of the proposed regulation. No change.</p>
82.	<p><b>Comment:</b> Revise 18 AAC 75.450(b)(2)(D): "Spill history is the past, not the future. a description of actions [<del>to be</del>] taken to prevent or mitigate similar discharges in the future;"</p> <p><b>Response:</b> Comment noted. This language is retained from 18 AAC 75.425(e)(2)(B) and has not changed, and the suggested modification is substantive. It is therefore outside the scope of the proposed regulations. No change.</p>
83.	<p><b>Comment:</b> 18 AAC 75.450(b)(3). A commenter recommended revising this regulation to allow reference to a compliant Spill Prevention Control and Countermeasures (SPCC) plan as an acceptable method of compliance. The commenter stated that potential discharge analysis requirements in the current 18 AAC 75.425(e)(2)(C) and proposed 18 AAC 75.450(b)(3) duplicate the requirements of the federal SPCC regulations required by 40 C.F.R. 112.</p> <p><b>Response:</b> Thank you for your comment. This language is retained from 18 AAC 75.425(e)(2)(C) without substantive changes, so any comment recommending substantive changes is beyond the scope of the proposed regulations. No change.</p>
84.	<p><b>Comment:</b> 18 AAC 75.450(b)(6). Comments suggest consolidating and streamlining repetitive portions of 18 AAC 75.450(b)(6)(A) and (B), as well as clarifying edits to the language.</p> <p><b>Response:</b> Thank you for your comments. This language is retained from 18 AAC 75.425(e)(2)(F), and, to maintain consistency and clarity, will not be combined. No change.</p>

85.	<p><b>Comment:</b> Two comments suggested extensive changes to the proposed language at 18 AAC 75.451(b)(1):</p> <ul style="list-style-type: none"> <li>• Recommended change: “for <b><u>an oil terminal, exploration facility, production facility, or pipeline, a list of field-constructed aboveground oil storage tanks and permanent shop fabricated aboveground oil storage tanks at the facility;</u></b> for each oil storage tanks with a storage capacity of greater than 10,000 gallons, the list shall include tank identification, type of oil stored, the oil storage capacity, <del>installation date</del>, year the tank was placed in service, design, and construction standard, inspection and maintenance standard, last and next dates (years) of internal and external inspections, leak detection method, corrosion control system, and overflow protection devices; and the product type stored;”</li> <li>• “Recommend revising as follows: (1) <b><u>for an oil terminal, exploration, production, or crude oil transmission pipeline facility,</u></b> for each <b><u>aboveground</u></b> oil storage tank <del>with a storage capacity of greater than 10,000 gallons</del> <b><u>subject to 18 AAC 75.065 or 18 AAC 75.066,</u></b> the oil storage capacity, <del>installation</del> <b><u>construction date,</u></b> design, construction <b><u>standard,</u></b> and <del>the oil</del> product type stored;”</li> </ul> <p><b>Response:</b> The proposed requirements are carried over from current regulations at 18 AAC 75.425(e)(3)(A)(i) and (ii), with the removal of the requirement to list the amount of oil stored and the general condition of the tank. Based on the commenter's recommendations, the department has added the word “aboveground” to improve clarity. The proposed provisions are reasonably necessary and also sufficient to achieve the needs of this section; requirements will not be further added or removed. The department has determined that the additional suggested language changes do not improve clarity.</p>
86.	<p><b>Comment:</b> 18 AAC 75.451(b)(2). Comments requested removing the requirement in 18 AAC 75.451(b)(2) concerning tanks with storage capacity 1,000-10,000 gallons, on the basis that the department does not regulate storage tanks in that size range. One comment made in support of this regulation also calls for the regulation to require the location of facility oil storage containers.</p> <p><b>Response:</b> Comments noted. As indicated by the commenter, tanks with a storage capacity of 1,000 – 10,000 gallons are not subject to requirements in 18 AAC 75, Article 1. Since April 16, 1992, department policy has required information about tanks with a storage capacity of 1,000 - 10,000 gallons to be included in ODPCPs for purposes of determining overall facility storage capacity. This information was part of guidance document, OPC 92-6, which is currently incorporated into the department’s Oil Discharge Prevention and Contingency Plan Application Package and Review Guidance Document (Revision 1.2, December 2016, Minor updates 2020) in Appendix E. Facility storage capacity determines whether a facility is regulated under AS 46.04 and 18 AAC 75. The regulation incorporates the long-standing policy requiring the plan applicant to provide information on the location of tanks with a storage capacity of 1,000 – 10,000 gallons. No changes.</p>
87.	<p><b>Comment:</b> One comment was made on proposed 18 AAC 75.451(b)(3)(D). “It is unclear why ADEC is requiring that this specific CFR be referenced. ‘including verifying that the vessel is in compliance with the applicable stability requirements as set out in 46 C.F.R. 109.227, as amended through September 11, 1992;’ ADEC has little to no capability internally to validate the stability of a tank vessel operating in state waters. Suggest; (D) additional information required by the department to evaluate the response capability of a vessel, including <b><u>a statement</u></b> verifying that the vessel is in compliance with <b><u>all USCG and vessel class society requirements for operating as a tank vessel.</u></b> [THE APPLICABLE STABILITY REQUIREMENTS AS SET OUT IN 46 C.F.R. 109.227, AS AMENDED THROUGH SEPTEMBER 11, 1992;]”</p> <p><b>Response:</b> The requirement in proposed 18 AAC 75.451(b)(3)(D) is retained from current regulations at 18 AAC 75.425(e)(3)(A)(x). The department did not propose a substantive change to this provision, so this comment is outside the scope of the proposed regulations. No change.</p>

88.	<p><b>Comment:</b> Two comments were made regarding 18 AAC 75.451(b)(5):</p> <ul style="list-style-type: none"> <li>• “Revise 18 AAC 75.451(b)(5): Withdraw, this is addressed in 18 AAC 75.450(a); do not require transfer information in two locations in the plan.”</li> <li>• “Plan holders should not be required to describe typical, routine, or common operational procedures at facilities. This requirement should be addressed in Part 2 - Prevention Plan and is recommended to be added as 18 AAC 75.450(a)(4) ‘transfer procedures required by 18 AAC 75.025.’ Recommend withdrawing this requirement.”</li> </ul> <p><b>Response:</b> Comments noted, no change made. The requirement at 18 AAC 75.451(b)(5) is carried over from current regulations at 18 AAC 75.425(e)(3)(A)(vi). The requirement to detail general procedures for loading and transferring oil during regular operations at 18 AAC 75.451(b)(5) is not duplicative of requirements to plan for transferring and storing oil and oily waste recovered during a response effort as in proposed section 18 AAC 75.449, or discharge prevention information required by proposed section 18 AAC 75.450.</p>
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89.	<p><b>Comment:</b> 18 AAC 75.451(b)(7) and (8). Comments do not support the requirements at 18 AAC 75.451(b)(7) and (8) to provide diagrams showing facility oil piping, and suggest limiting the information required by this regulation, for example, only require locations of safety shutdown valves. Security concerns are mentioned as a reason for not providing full facility piping diagrams as required by this proposed regulation. One comment in support of this regulation calls for additional details to be provided about the facility oil piping.</p> <p><b>Response:</b> Thank you for your comments. Plan applicants who are concerned about sharing sensitive facility diagrams can request information be protected from public disclosure if it qualifies for protection under AS 40.25.120. The information required in the proposed regulation is relevant to, and sufficient for response planning purposes. No change.</p>
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90.	<p><b>Comment:</b> Three comments were made requesting revisions to proposed 18 AAC 75.451(c):</p> <ul style="list-style-type: none"> <li>• Comments request to remove the phrase “from the facility” and remove the phrase “or operation.”</li> <li>• “This requirement is the same verbiage from existing 18 AAC 75.445(e) and describes ‘Approval Criteria’ not ‘Plan Content.’ It is not clear how this requirement would be described or demonstrated in this part of the plan because it applies to response capability to cleanup the response planning standard (i.e., 18 AAC 75.430 - 18 AAC 75.442), which is already described in the response scenario requirements in Part 1 of the plan. The subparagraphs are also presented as specific to the response scenario and response planning standard. ADEC has missed an opportunity to streamline by removing repetitive, verbose language housed in existing 18 AAC 75.445 ‘Approval Criteria.’”</li> <li>• “Due to the wording (c), this requirement is specific to the response scenario and response planning standard and should be addressed in Part 1 requirements. Recommend withdrawing this requirement.”</li> </ul> <p><b>Response:</b> The requirement to include an analysis of the expected portion of a response planning standard volume discharge to reach open water at 18 AAC 75.451(c) is not limited to the scenario chosen to fulfill the requirement at 18 AAC 75.449(a)(6). We have revised 18 AAC 75.451(c) to clarify that the requirement is for the analysis to be conducted and that it must include a determination concerning the sufficiency of resources identified in the plan to clean up the portion of oil that may realistically reach open water. The use of the phrase “facility or operation” is consistent with usage throughout Article 4.</p>
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91.	<p><b>Comment:</b> 18 AAC 75.451(d). Numerous comments generally oppose the proposed change to require specific command system information; comments recommend instead reverting to current requirements or allowing less detailed information to be provided. Comments express concern about how the department will manage and protect personal information provided. Comments state that it is not reasonable for the plan holder to identify applicable personnel outside of the plan holder’s organization. Commenters recommend that, instead of providing the required information, the plan applicant should be able to describe or reference the ICS structure, provide only position titles, or reference the relevant information about the structure of the applicant’s command system as described in the Alaska Incident Management System Guide instead of the Alaska Regional Contingency Plan. Comments express concern that keeping this information up to date would be time consuming, and “does not improve plan holder ability to prevent or respond to an incident,” and request a clear frequency for submitting updates to the department. One comment says “The information required to be provided to the ADEC for each ICS position according to the Alaska Regional Contingency Plan for 24-hr operations unfairly burdens small planholders who do not confront large extended responses and source their IMT members internally.” One commenter expressed concern that persons identified as filling response planning standard scenario roles could be restricted from filling alternate roles in a real response. A comment requests clarity about requirements for personnel that are part of an IMT versus a plan holder’s spill command and response personnel. Finally, comments make numerous recommendations for changes to the regulation language. One comment expresses support for the change to allow some information to be provided as a separate document.</p> <p><b>Response:</b> Thank you for your comments. The department has removed duplicative language and made multiple revisions to improve clarity throughout. The subsection title is updated for clarity. The department has determined that it is appropriate to reference the Alaska Regional Contingency Plan in this subsection because it is helpful to the plan applicant. We have revised the regulation to clarify confidentiality of detailed personnel contact information. The department finds it is essential for plan holders to maintain up-to-date information on persons filling command system roles so that this information is readily available for use during an emergency spill response. The option to provide updates to the department on a quarterly basis is appropriate. The plan holder must provide response personnel information for the hours during which the scenario describes active response operations, whether 24-hours each day or a shorter operational period. This planning information does not restrict individual personnel from filling alternate positions during a real event.</p>
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92.	<p><b>Comment:</b> Three commenters provided input on regulations at 18 AAC 75.451(e):</p> <ul style="list-style-type: none"> <li>• One commenter expressed support for the regulation as revised and noted the department’s authority to require temporary prevention and response measures during a response when conditions exceed realistic maximum response operating limitations.</li> <li>• Two commenters suggested removing text to simplify and eliminating duplicative language (18 AAC 75.451(e)(1).</li> <li>• One commenter recommended multiple revisions, including removing some of content of 18 AAC 75.451(e) or linking it within the response planning standard scenario, and removing the requirement to conduct an analysis of realistic maximum response operations limitations using specific data listed in 18 AAC 75.451(e)(3).</li> </ul> <p><b>Response:</b> Comments noted. Repetitive text has been removed from 18 AAC 75.451(e), with corresponding edits to 18 AAC 75.451(e)(1). 18 AAC 75.451(e) will not be removed or consolidated with requirements in 18 AAC 75.449. Scenarios may not include response strategies that cannot be implemented in conditions beyond the limitations described in 18 AAC 75.451(e); RMROL requirements are properly located in supplemental information and describe conditions that may limit the use of mechanical response options. Requirements in 18 AAC 75.451(e)(2) are retained from 18 AAC 75.425(e)(3)(D) and will not be removed. The suggested edits to 18 AAC 75.451(e)(3) are not appropriate. The department appreciates the comment in support of proposed changes to this section.</p>
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93.	<p><b>Comment:</b> 18 AAC 75.451(f): A commenter stated that “the word ‘identify’ should be used instead of ‘identification of,’” and recommended consolidating the requirement at 18 AAC 75.451(f) into 18 AAC 75.449(a)(5).</p> <p><b>Response:</b> Comment noted. This requirement is carried over from current regulations at 18 AAC 75.425(e)(3)(E). The list of transport equipment belongs in Part 3, Supplemental Information, and the strategy for transporting equipment and personnel during an initial response belongs in Part 1, Response Action Plan. No changes.</p>
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94.	<p>A number of comments were made regarding proposed subsection 18 AAC 75.451(g):</p> <p><b>Comment 1:</b> Language suggestions were made:</p> <ul style="list-style-type: none"> <li>• Add “intended for use in the response effort” to 18 AAC 75.451(g)(4).</li> <li>• Include the words “provide information on” at the beginning of 18 AAC 75.451(g)(4), (5), and (6).</li> <li>• Include the word “describe” at the beginning of 18 AAC 75.451(g)(8)</li> </ul> <p><b>Response 1:</b> The department has determined that these language suggestions do not improve clarity. No change.</p> <p><b>Comment 2:</b> commenters made recommendations for revisions:</p> <ul style="list-style-type: none"> <li>• Recommendation to combine 18 AAC 75.451(g) and (h) with extensive revisions. The recommended revisions also include substantive changes to the requirements.</li> <li>• Recommendations to consolidate portions of 18 AAC 75.451(g) and (h) with 18 AAC 75.449(a)(6) and (7). The recommended revisions also include substantive changes to the requirements.</li> </ul> <p><b>Response 2:</b> The department has determined that the suggested reorganization does not improve clarity. The requirements in 18 AAC 75.451(g) are carried over from current plan content requirements at 18 AAC 75.425(e)(3)(F) and approval criteria at 18 AAC 75.445(g). The department did not propose substantive changes to the provisions we retained from current regulations; comments recommending substantive changes are outside the scope of the proposed regulations.</p> <p><b>Comment 3:</b></p> <ul style="list-style-type: none"> <li>• Concern that “it is not reasonable in all cases nor even possible to be able to protect environmentally sensitive areas and areas of public concern prior to oil reaching them.”</li> <li>• Recommendation to remove “before oil reaches them” from 18 AAC 75.451(g) regarding ESA's and areas of public concern identified in 18 AAC 75.451(k)</li> </ul> <p><b>Response 3:</b> One purpose of the response plan is to demonstrate the ability and resources to protect ESA's and areas of public concern identified in 18 AAC 75.451(k) before oil reaches them. This regulation implements the statutory requirement to protect environmentally sensitive areas at AS 46.04.030(e). The department notes that, consistent with statutes at AS 46.04.030(l), these regulations establish planning standards, not spill response performance standards. The requirements in 18 AAC 75.451(g) are carried over from current plan content requirements at 18 AAC 75.425(e)(3)(F) and approval criteria at 18 AAC 75.445(g). The department did not propose substantive changes to the provisions we retained from current regulations; comments recommending substantive changes are outside the scope of the proposed regulations.</p> <p><b>Comment 4:</b> suggestion to update 18 AAC 75.451(g)(7) to remove duplicative information also in 18 AAC 75.451(h)(3)(A), and correct “oil waste” to “oily waste”.</p> <p><b>Response 4:</b> The department has updated 18 AAC 75.451(g)(7) to remove duplicative language with 18 AAC 75.451(h)(3)(A), and to use the correct terminology.</p>
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**Comment 5:**

- “Clarification is requested on the ADEC’s definition of ‘ready access.’”
- “This new subsection also requires that identified equipment must reflect the best available technology when the plan is submitted. It is recommended that this statement is revised to state ‘best applicable or practicable available technology’ or some similar statement. The ‘best available technology’ may not be appropriate for the unique situation and circumstances in which [the commenter] conducts its operations. To demonstrate that each response equipment item is the best available technology essentially constitutes requiring a Best Available Technology (BAT) analysis on each piece of equipment. If the ADEC is requiring plan holders to conduct a BAT analysis on each type of spill response equipment listed within its plans, then this should be clearly stated in the proposed section 4 requirements.”

**Response 5:** Current regulations at 18 AAC 75.445(g)(1) and (2) require the plan applicant to have “ready access” to enough equipment that reflects the best available technology to meet the applicable response planning standard; this requirement is not new. The definition of BAT is given in current regulations at 445(k) and in the proposed public review version of regulations at 18 AAC 75.452(b), which has been renumbered 18 AAC 75.452(c) in the final regulation. The commenter’s statement that each individual piece of equipment requires a BAT analysis is incorrect. Section 18 AAC 75.452 details which technologies require an individual BAT analysis; repeating this information in section 18 AAC 75.451 would be duplicative. No changes made in response to this comment.

**Comment 6:** “Plan holders should be able to incorporate by reference, response equipment information contained in a separate document, plan, or information system developed by the plan holder or Primary Response Action Contractor,” as is allowed at 18 AAC 75.449(a)(6).

**Response 6:** The requirement to list response equipment at 18 AAC 75.451(g) is carried over from current plan content requirements at 18 AAC 75.425(e)(3)(F). The department did not propose substantive changes to the provisions; the recommended substantive changes are outside the scope of the proposed regulations.

**Comment 7:** One comment notes that clarification of what is required to be listed in the plan at section 18 AAC 75.451(g) “will promote innovation in oil spill response equipment around the state”

**Response 7:** Thank you for your comment.

**Comment 8:** One comment was made in support of requiring timeframes for delivery of resources located outside of a facility’s primary region of operation.

**Response 8:** Thank you for your comment

95. A number of comments were received regarding requirements at 18 AAC 75.451(h):
- Comment 1:** Suggestions to consolidate 18 AAC 75.451(h) and (g) or move this content to 18 AAC 75.449(a)(6) and (7).
- Response 1:** The department has determined that the proposed structure is appropriate, and the recommendation to combine 18 AAC 75.451(h) and (g) does not improve clarity. Under the proposed new regulations structure, plan contents and approval criteria are presented together. Detailed technical information about response equipment, including technical specifications, equipment lists, operations plans, and calculations for oil recovery capacities is appropriately located in the Supplemental Information section (18 AAC 75.451). In contrast, the Response Action Plan in 18 AAC 75.449 describes strategies for use of equipment in a response.
- Comment 2:** Recommendation to remove the phrase “to the satisfaction of the department” from 18 AAC 75.451(h)(2).
- Response 2:** This phrase has been removed, and a reference to the specific process for applying for an alternative effective daily recovery capacity at 18 AAC 75.451(h)(3)(C) has been added.

**Comment 3:** Comments request clarification regarding the meaning of “available storage capacity” in 18 AAC 75.451(h)(3)(B) as follows:

- Does this include “existing unused storage capacity at a facility?”
- “If defined as temporary storage (such as a towable bladder), this is likely an intermediate step between recovery and disposal or oil separation and in this case, temporary storage may not appear to be sufficient for an entire day’s recovery efforts but if simultaneous removal is occurring, the scenario should not be derated to reflect the temporary storage maximums.”
- “Who is authorized to determine the limit?”

**Response 3:** A department guidance document titled “Aboveground Storage Tanks Emergency use for Temporary Storage” describes the requirements for the use of existing tanks at a facility as temporary storage. It can be found on the department website at <https://dec.alaska.gov/spar/ppr/regulations-guidance/manuals-guidance/>. 18 AAC 75.451(h)(3)(A) states that the capacity of the temporary storage system for recovered oil and oily wastes must be appropriate and adequate for the total volume of oily fluids recovered, based on equipment manufacturer's rated throughput capacity, ...within the Response Planning Standard time frame. This includes downtime for transfer and offloading recovered oily water. The plan applicant demonstrates to the department their ability to store the oily wastes collected consistent with their planned response for their response planning standard volume through the scenario requirements at 18 AAC 75.449(a)(6)(J) and (K), supported by the technical information required in 18 AAC 75.451(h).

**Comment 4:** Concerns about alternative skimmer system derating factors at 18 AAC 75.451(h)(3)(C)

- “Is the department making guidance a regulation with this proposed language? What criteria is the department using to evaluate and approve or deny a request?”
- Concern that previously obtained alternative skimmer system derating factors approved by the department would no longer be applied, leading to the need for additional resources.
- Concern that 18 AAC 75.451(h)(3)(A) and (B) apply to a single skimmer, rather than a skimmer tactic.
- “ADEC should not adopt this proposed new requirement. It is unclear how this information would be presented in this part of the plan.”
- Suggestion to change “each piece of recovery equipment:” to “each skimming system”

**Response 4:** The department has incorporated some requirements from guidance into regulation. Requests for alternative skimmer system derating are reviewed by the department by evaluating the entire system used for recovery ( i.e. associated pumps and hoses, boom, storage, etc.,) based on the parameters submitted on the skimmer system efficiency evaluation form, as described in Skimmer System Derating for Contingency Planning guidance document, which can be found on the department website at <https://dec.alaska.gov/spar/ppr/regulations-guidance/manuals-guidance/>. If a plan holder has successfully demonstrated that another oil recovery efficiency rate is appropriate for a skimmer system, this determination continues to hold. Submitting a request for skimmer system efficiency evaluation is independent of a plan application. The calculation of an effective daily recovery capacity for a piece of recovery equipment must still take into account components of the system in which it operates. Language in the proposed regulation has been updated to incorporate the more accurate phrase “each skimming system.”

96. Two comments were received regarding proposed 18 AAC 75.451(i):

**Comment 1:** “The requirement to provide a ‘description of the response equipment and services provided’ should be removed... Information about response equipment is already required by proposed section 18 AAC 75.451(g) and 18 AAC 75.500 clearly defines services provided by an oil spill primary response action contractor.”

**Response 1:** The requirements these sections are distinct. Section 18 AAC 75.451(g) requires the plan holder to identify the equipment and services available to respond, while section 18 AAC 75.451(i) requires the plan holder to describe which of those services and equipment will be provided by their oil

	<p>spill PRAC. 18 AAC 75.500 establishes registration requirements, but does not obligate an oil spill PRAC to provide specific information. No change made.</p> <p><b>Comment 2:</b> A comment requests clarification of what information is required in the “statement of contractual terms,” and notes that some terms such as compensation are confidential.</p> <p><b>Response 2:</b> The regulation requires a statement of contractual terms signed by plan holder and each PRAC, attesting to the department that the contract fulfills the requirements described in 18 AAC 75.451(i)(1)-(2). A Statement of Contractual Terms form is provided by the department as described in the Editor's Note for section 18 AAC 75.451 and may be used by any plan holder. The department does not request information regarding individual PRAC compensation. No change made.</p>
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97.	<p><b>Comment:</b> 18 AAC 75.451(j): Several comments call for adding clarity, additional details, and streamlining requirements in 18 AAC 75.451(j), as well as replacing specific requirements with the citations for related requirements in Article 1. Commenters recommended adding a plan holder’s training exercise program and exercises required by 18 AAC 75.485 under training requirements.</p> <p><b>Response:</b> Thank you for your comments. We have edited 18 AAC 75.451(j) to remove unnecessary language regarding compliance with other applicable state and federal training requirements. Compliance with other agency regulations is always required without being stated in these regulations. We have added language to clarify that the training described under this subsection is for both spill prevention training and spill response training. To maintain clarity, the language in this subsection will not be consolidated. While training may include practice exercises, the exercises required under 18 AAC 75.485 are for the purpose of demonstrating to the department that the plan is adequate and can be effectively implemented by the plan holder. Practice exercises that are part of a plan holder's training program should be described in the plan in Part 3. No additional changes.</p>
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98.	<p><b>Comment:</b> Comments on restructuring 18 AAC 75.451(n) and 18 AAC 75.451(h) were provided:</p> <ul style="list-style-type: none"> <li>• “Subsections (h) and subsection (n) should be combined into a new subsection describing use of ASTM 2709-08 or other internationally accepted formula for determining oil to water recovery ratios. ASTM 2709-08 or the latest ASTM standard that has been accepted by the international community currently is the most effective way to determine skimmer oil to water ratios and should be adopted by ADEC.”</li> <li>• “Good change – adds clarification.” The commenter also recommends removing the last sentence in subsection (n): <del>[It is accepted that the manufacturer’s rated throughput capacity should be used in conjunction with a derating factor to account for various real world conditions including changing encounter rate, slick thickness, changes in oil properties, and inclement weather.]</del></li> </ul> <p><b>Response:</b> Comments noted. The definition of “manufacturer's rated throughput capacity” will not be consolidated into (h); the phrase is used throughout the section, so the definition needs to apply throughout the section. Incorporating the use of ASTM 2709-08 for determining oil to water recovery ratios would be a significant change and is beyond the scope of the proposed regulations. The definition at 18 AAC 75.451(n) has been edited for clarity, but the statement describing that the manufacturer's rated throughput capacity is used in conjunction with a derating factor is retained. Please note that in the final revision of 18 AAC 75.451, the subsection proposed as (n) is renumbered to 18 AAC 75.451(o).</p>
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18 AAC 75.452: Best Available Technology Review

99.	<p><b>Comment:</b> The department noted numerous comments on Best Available Technology (BAT) requirements at 18 AAC 75.452 and which technologies require an analysis demonstrating they meet BAT in an oil discharge prevention and contingency plan. Comments ranged from requesting the department support the use of BAT to stating that BAT is an outdated concept and that applicants should be allowed to attest they use BAT and forego the exercise of a structured analysis of the in use or chosen technology.</p> <p><b>Response:</b> The department’s commitment to ensuring ODPCPs demonstrate the use of best available technology has not changed. ODPCPs are required to demonstrate the use of best available technology</p>
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under AS 46.04.030(e). The regulations proposed in 18 AAC 75.452 implement that statutory requirement. The proposed 18 AAC 75.452 identifies technologies that require analysis to demonstrate they are best available technology. Technologies that the department has determined to be best available technology if they meet a codified prevention performance standard or the response planning standard are not subject to individual analysis under 18 AAC 75.452. Responses to recommendations to add or remove specific technologies from a best available technology analysis requirement are addressed separately.

100. **Comment:** In proposed section 18 AAC 75.452, one comment suggested adding additional field communication technologies for BAT analysis. Another comment requested that the department develop specific requirements for a tug escort system in Cook Inlet.  
**Response:** The requirement for BAT analysis for communications technologies has been retained. Adding a BAT analysis requirement for tank vessels under escort and escort vessels in Cook Inlet is a substantive change. Therefore, the comment is outside the scope of the proposed regulations.

101. **Comment:** Comments request deletion of BAT requirements at 18 AAC 75.452(a)(1)(A)-(C), as follows:

- 18 AAC 75.452(a)(1)(A) “This was originally put into the regulations post Exxon Valdez spill when communication technology was limited to hardline phones, facsimile machine and the internet didn’t exist. Plan holders are going to implement the best communication method possible for operating in AK.”
- 18 AAC 75.452(a)(1)(B) “Plan holders are going to implement the source control method possible to limit the discharge of oil.”
- 18 AAC 75.452(a)(1)(C) “Plan holders (and through their PRAC) are going to utilize acceptable trajectory analysis and forecasting models and methods to track a discharge to water with the intent of minimizing impact to sensitive areas.”

**Response:** The provisions at 18 AAC 75.452(a)(1)(A), 18 AAC 75.452(a)(1)(B), and 18 AAC 75.452(a)(1)(C) are carried over from current 18 AAC 75.425(e)(4)(A)(i) with updated citations but no changes to the requirements. These comments suggest substantive changes that are outside the scope of the proposed regulation. No change.

102. **Comment:** A number of comments suggest deleting the BAT requirement at 18 AAC 75.452(a)(1)(D) and instead require plan holders to adhere to the Wildlife Protection Guidelines, referenced at 18 AAC 75.449(a)(6)(M). In contrast, one comment states: “We support the requirement that contingency plans include technologies that would be used for... ‘wildlife capture, treatment, and release procedures and methods described under 18 AAC 75.449(a)(6)(M).” “This explicit requirement helps ensure that wildlife capture, treatment, and release procedures are addressed.”  
**Response:** We address comments about adopting the Alaska Regional Response Team's Wildlife Protection Guidelines for Oil Spills in Alaska (WPG) in our response to comments on 18 AAC 75.449(a)(6)(M). The WPG is now adopted by reference in 18 AAC 75.449(a)(6)(M). The plan applicant must demonstrate in Part 4 of the ODPCP that their wildlife capture, treatment, and release procedures and methods are BAT according to the analysis criteria in 18 AAC 75.452(b) of the proposed public review version of the regulation, located at 18 AAC 75.452(c) in the final regulation. Requirements for a BAT analysis for wildlife capture, treatment, and release procedures and methods will be retained.

103. **Comment:** proposed 18 AAC 75.452(a)(2)(B) (current 18 AAC 75.425(e)(4)(A)(ii))  
“To be consistent with the language in 18 AAC 75.065(h)(1)(D) the words ‘or control’ should be removed.”

	<p><b>Response:</b> Thank you for the comment. We have removed the words ‘or control’ from 18 AAC 75.452(a)(2)(B) to be consistent with 18 AAC 75.065(h)(1)(D).</p>
104.	<p><b>Comment:</b> proposed 18 AAC 75.452(a)(2)(D) (current 18 AAC 75.425(e)(4)(A)(ii))  “ADEC proposed removal of 18 AAC 75.080(d), which is the requirements for facility oil piping cathodic protection. Requirements under (l) and (m) only pertain to protective coatings. Reference to ‘cathodic protection’ should be removed. Recommend revising as follows: (D) protective coating <del>and cathodic protection</del> if required by 18 AAC 75.080(l), or (m)(1) or (2);”</p> <p><b>Response:</b> Thank you for your comment. We have removed reference to “cathodic protection” in 18 AAC 75.452(a)(2)(D).</p>
105.	<p><b>Comment 1:</b> proposed 18 AAC 75.452(a)(4) (current 18 AAC 75.425(e)(4)(A)(iv))  “The added specification that BAT is required for those crude oil transmission pipelines that ‘do not have the continuous capability to detect a daily discharge equal to not more than one percent of daily throughput’ is commendable. No recommendation.”</p> <p><b>Comment 2:</b> “Changes that we applaud include... 18 AAC 75.452(a)(2)(A): good clarification for tank leak detection, 18 AAC 75.452(a)(4): good clarification on pipeline leak detection”</p> <p><b>Response:</b> Thank you for your comments.</p>
106.	<p><b>Comment:</b> 18 AAC 75.452(a)(7). Suggested revision: “for each applicable technology under (a) of this section, identify <del>all</del> available technologies and include a written analysis of each technology, using the applicable criteria in (b) of this section; and include a written justification that the technology proposed to be used is the best available for the applicant's operation.”</p> <p><b>Response:</b> The content of proposed 18 AAC 75.452(a)(7) is now located at 18 AAC 75.452(b) in the final regulation. The language in proposed 18 AAC 75.452(a)(7) is carried over from the language in current 18 AAC 75.425(e)(4)(B) and (C), including the use of the word “all.” Removing the word “all” would change the scope of the requirement. There was no substantive revision proposed for this provision, so this comment is beyond the scope of the proposed regulation.</p>
107.	<p><b>Comment:</b> A comment recommended revising the language at 18 AAC 75.452(b) to “better consolidate and streamline the text.” The comment recommended modifying the subsection heading of 18 AAC 75.452(b) to differentiate it from the subsection heading from 18 AAC 75.452(a). The commenter also recommended merging the paragraphs and subparagraphs in 18 AAC 75.452(b) by removing all of the paragraph and subparagraph structure.</p> <p><b>Response:</b> The content of proposed 18 AAC 75.452(b) is now located at 18 AAC 75.452(c) in the final regulation. The recommended revision to merge the paragraphs is not in alignment with drafting guidelines in the Drafting Manual, and we think it would increase the risk of missing specific evaluation criteria. Additionally, the commenter’s proposed language, as written, would change the content of the BAT determination requirements.</p> <p>We have, however, revised the structure of 18 AAC 75.452 for clarity while retaining the requirements of the proposed regulation. The headings are no longer necessary and have been removed. Subsection (a) now specifies the requirement for use of best available technology and outlines criteria by which technologies must be evaluated. Subsection (b) specifies the plan must include a written justification for each applicable technology identified in 18 AAC 75.452(a)(1) – (6). Subsection (c) clarifies the basis for the department’s determination on best available technology, including the specific criteria the plan applicant must apply to their analysis. Subsection (d) notes that the department will provide a written finding explaining its decision if it determines that a technology evaluated under subsection (c) is not best available technology.</p>

108. **Comment:** “The BAT review process in 18 AAC 75.452(b)(1) language states; *if the technology of the applicant’s oil discharge response system as a whole is appropriate and reliable for the intended use as well as the magnitude of the applicable response planning standard;*  
 This language, ‘*if the technology of the applicant’s oil discharge response system as a whole is appropriate*’ Should be applied to all aspects of the required resources for efficient spill response and management and not primarily focus on in field response equipment.”  
**Response:** Thank you for your comment. The content of proposed 18 AAC 75.452(b)(1) is now located at 18 AAC 75.452(c)(1) in the final regulation. The definition of “technology” in 18 AAC 75.990 applies to all of Article 4, and it encompasses equipment, supplies, other resources, and related practices. Analysis of technologies must include those components as applicable. The definition of “technology” is not changed.

109. **Comment:** “18 AAC 75.452(b)(3) is adequate but ADEC should conduct an internal review to confirm that the department has the resources to adequately comply with the provisions of this subsection.”  
**Response:** The content of proposed 18 AAC 75.452(b)(3) is now located at 18 AAC 75.452(c)(3) in the final regulation. This comment is outside the scope of the regulations package, but the department has noted this suggestion. Thank you for your comment.

110. Two comments were made regarding the department process for evaluating best available technologies:  
**Comment 1:** At 18 AAC 75.452(b)(1): “Removed requirements for communicating information and reporting on BAT reviews as well as the opportunity to comment. This means there wouldn’t be any documentation to refer to for planning purposes and nor to support ADEC determinations.”  
**Response 1:** The regulation at proposed 18 AAC 75.452(b)(1) is a verbatim relocation of best available technology review criteria currently located in 18 AAC 75.445(k)(1); this content is now located at 18 AAC 75.452(c)(1) in the final regulation. Comments that suggest a substantive change to this provision are outside the scope of the regulations package. It is possible the commenter was referring to the repeal of regulations at 18 AAC 75.447 related to new technology conferences. If so, the repeal of 18 AAC 75.447 is addressed in response to comment #39 in this document.  
**Comment 2:** 18 AAC 75.452(c) “Please clarify the process to reconcile differences of opinion regarding BAT or identify any applicable appeal process.”  
**Response 2:** The content of proposed 18 AAC 75.452(c) is now located at 18 AAC 75.452(d) in the final regulation. The written finding of a determination that the plan does not demonstrate the use of BAT would be part of the department's decision on the plan application in 18 AAC 75.460(b). Procedures to appeal a decision are specified in 18 AAC 75.460(b)(2).

111. **Comment:** proposed 18 AAC 75.452(c) (current 18 AAC 75.445(l))  
 “Recommend revising as follows: (c) If the department's ~~determination~~ **determines criteria** under (b) of this section ~~is indicate~~ that a technology proposed for use by the ~~applicant~~ **plan holder** is not the best available technology, the department will provide a written finding explaining its ~~decision~~ **determination.**”  
**Response:** The content of proposed 18 AAC 75.452(c) is now located at 18 AAC 75.452(d) in the final regulation. We have revised the regulation to reflect active voice consistent with the Drafting Manual, but we have not changed the meaning of the requirement.

18 AAC 75.453: Response Planning Standard Calculation

112.	<p><b>Comment:</b> Two comments were made regarding the reorganization of RPS calculation requirements into section 18 AAC 75.453:</p> <ul style="list-style-type: none"><li>• “Moves % of RPS to water to part 5 – good change”</li><li>• “Administrative change with potential to require more repeated information that does not improve ability to respond to a spill. Relevant text: ‘and include, based on the receiving environment information in 18 AAC 75.451(c), an estimate of what percentage of the applicable response planning standard volume set out at 18 AAC 75.430 - 18 AAC 75.436, or 18 AAC 75.442 for the facility or operation that will reach open water”</li></ul> <p><b>Response:</b> Comments noted. The requirements in proposed 18 AAC 75.451(c) and 18 AAC 75.453 are consolidated from current sections 18 AAC 75.425(e)(3)(B), 425(e)(5), 445(e), and 445(n), and are not an increased administrative requirement. No change.</p>
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18 AAC 75.455 - 457: Department plan review procedures

113.	<p><b>Comment:</b> The following comments were made regarding timelines in section 18 AAC 75.455:</p> <ul style="list-style-type: none"><li>• Sufficiency review in 18 AAC 75.455 should be aligned with determination of whether a minor amendment is a major amendment in 18 AAC 75.415.</li><li>• The department should determine whether all application packages are sufficient for review within seven days, not just plans reviewed under 18 AAC 75.455.</li><li>• An amendment application should be determined to be minor or major and sufficient for review in seven days, not seven working days, and not seven working days after being determined to be major.</li><li>• The language in 18 AAC 75.455(a) for a minor amendment determined to be major “does not state that after the initial seven-day period that the department will notify the applicant that additional time is required for review,” recommending alternate language: “the department will notify the applicant and conduct a review to determine if the application package is sufficient for review not later than seven working days.”</li><li>• The department “Should add ‘or sooner’ to allow for a shorter review period if possible.”</li><li>• “ADEC should specify that the applicant will be notified in writing if an application package IS sufficient for review”</li></ul> <p><b>Response:</b> Comments noted, no change. The timeline for the department to determine sufficiency of the application package for an amendment that was submitted as a major amendment remains seven working days. Minor amendments are not subject to a sufficiency determination. The extended timeline for a sufficiency determination, therefore, applies only to amendments that were submitted as minor amendments, but should have been submitted as a major amendment. Thus, DEC may use up to 10 working days under 18 AAC 75.415(f) to decide that an amendment submitted as a minor amendment is a major amendment; subsequently the department may use up to seven working days to determine whether the application is sufficient for review. The timelines are appropriate. 18 AAC 75.455(b) states that when the department determines that an application package for a new plan, plan renewal, or major amendment is sufficient for review, the department will notify the applicant in writing.</p>
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114.	<p><b>Comment:</b> 18 AAC 75.455, RFAI Timeline. Comments express support for the shortened timeframe (60 days vs 90 days) for the department to submit requests for additional information (RFAs). Some comments requested that this period be further shortened to 30 or 45 days or, in one case, to 10 days. Two comments request the department to add the language “or sooner” to the 60-day timeline. Some comments request that the department notify plan applicants if the longer 90-day time period will be required for their application package.</p>
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	<p><b>Response:</b> Comments noted. We agree that quickly reviewing RFAI responses benefits both the applicant and the department. The complexity and variability of RFAIs and RFAI responses, however, make a shorter timeframe impractical. The department will retain the timelines proposed in the draft regulation. Adding the phrase “or sooner” to the regulations would be redundant with the current language; there is no requirement for the department to wait until the deadline to submit an RFAI. We appreciate the request for DEC to notify the applicant that the 90-day period is necessary. It is already department practice to notify applicants when an RFAI will be transmitted, and we will modify our template to reflect an estimated timeframe for the RFAI to be provided.</p>
115.	<p><b>Comment:</b> A number of commenters applaud the change to the department publishing an online public notice at 18 AAC 75.455(b). Two comments suggest combining the language in 18 AAC 75.455(b)(5)(C) and (D)</p> <p><b>Response:</b> Comments noted. 18 AAC 75.455(b)(5)(C) has been repealed entirely.</p>
116.	<p><b>Comment:</b> 18 AAC 75.455(b)(5). A commenter stated the applicant should have the opportunity to review the public notice before it is published.</p> <p><b>Response:</b> Currently, the department provides the notice content and directs the plan applicant to publish the notice. There is no change to how the notice content is prepared, including the department’s practice of coordinating the public review with the applicant. The only change is that the department will now also publish the notice. No change to the proposed regulation.</p>
117.	<p><b>Comment:</b> Delete 18 AAC 75.455(c)(4) because the requirement is addressed in 18 AAC 75.455(d).</p> <p><b>Response:</b> Comment noted. The requirements in 18 AAC 75.455(c)(4) are not duplicative of requirements in 18 AAC 75.455(d).</p>
118.	<p><b>Comment:</b> 18 AAC 75.455(e) “Request for additional information: It may be unrealistic to review all public comments received during a RFAI within this seven-day period. Suggest; (e) The department will make a determination as to whether an application package is complete not later than [SEVEN] <b>fourteen</b> working days after the end of the public comment period established in (d) of this section,”</p> <p><b>Response:</b> Thank you for your comment. The department has determined that the seven-day timeline in the current regulation is sufficient. No change.</p>
119.	<p><b>Comment:</b> Regarding 18 AAC 75.455(f): Comments suggest reviewing and updating the reference to 18 AAC 15.060 to incorporate only the portions of 18 AAC 15.060 that are relevant to this regulation and to remove duplicative text, including text that repeats portions of 18 AAC 15.060.</p> <p><b>Response:</b> Comments noted. The department has determined that the language is appropriate as written. The conditions to hold a public hearing specified in 18 AAC 75.455(f) do not duplicate 18 AAC 15.060(a) and (b) because the latter regulation is specific to applications that do not include ODPCPs. The use of the phrase “in the manner under” in 18 AAC 75.455(f) does not incorporate any portions of 18 AAC 15.060 that are not relevant. No change.</p>
120.	<p><b>Comment:</b> Regarding 18 AAC 75.455(f): Two comments request additional clarity on the conditions for holding a public hearing, including how “municipality” or “affected area” are defined. One commenter “seeks to ensure that ‘municipality’ is understood broadly, as appropriate to different forms of governance common in Alaska. Please clarify that the term municipality includes a village, borough, city, or tribe.”</p>

**Response:** Thank you for your comments. 18 AAC 75.455(f)(1) and (2) were added to specify additional avenues under which the department will hold a public hearing. The terms “affected area” and “governing body of an affected municipality” are used throughout 18 AAC, Chapter 15, and specifically in 18 AAC 15.060. As a whole, 18 AAC 15.060 describes the manner under which the department will hold and conduct a public hearing on contingency plan application packages. We have decided not to define these terms in this regulation, and they should be understood as used in plain language.

121. **Comment:** Comments state that the reduced timeline for review at 18 AAC 75.455(g) is still too long, and suggest shortening it to [10, 30, or 45] days to reduce the overall timeline for applications. Comments also suggest adding the phrase “or sooner” to allow for a shorter review period when possible.  
**Response:** Comments noted. After considering requests received in the 2019 public scoping to shorten the plan review timeline, the department proposed to reduce the 65-day review period to 60 days. An even shorter review period is not feasible for all plans; the proposed 60-day period is appropriate. Adding the phrase “or sooner” to the regulations would be redundant. No change.

122. **Comment:** 18 AAC 75.457 “This language does not allow for a shorter expiration date for a plan that was approved under expedited review. An emergency modification approval process should only last as long as a declaration of emergency exists and not be subject to the full five year approval term. Suggest adding; 18 AAC 75.457(b) Plans approved under expedited review processes will expire no later than one year from the date of the expedited approval.”  
**Response:** Comment noted. Aside from one editorial change, 18 AAC 75.457 was not revised in the department’s proposal. This comment is beyond the scope of the proposed regulations. No change.

18 AAC 75.459: Preissuance conference

123. **Comment:** 18 AAC 75.459(a). Several commenters stated that the requirement to “materially aid” the department in its decision is too restrictive as a basis for a preissuance conference to be held and that plan holders should have the ability to request a preissuance conference for any reason. They stated that 18 AAC 15.070 describes a preissuance conference as “discretionary, informal, and nonadjudicative;” and that a request for a preissuance conference should not be subject to a department decision. Commenters recommended revising the regulation: “(a) After the department has determined ~~the~~ **an** application package is complete and before the department issues its decision under 18 AAC 75.460, the applicant may request a preissuance conference from the department. The request must be made in writing, ~~and will be granted if the applicant demonstrates that holding a conference will materially aid the department in reaching its decision.~~”  
**Response:** Comments noted. The comment misinterprets what it means for a preissuance conference to be “discretionary” under 18 AAC 15.070. It does not mean applicants are entitled to a conference upon request; it means the department has broad discretion to grant or deny a request for a preissuance conference. The department did not propose any substantive changes to the criteria for reviewing a request for a preissuance conference, so this comment is beyond the scope of the proposed regulations.

18 AAC 75.460: Department decisions on plans:

124. **Comment:** Commenter supports the proposed change at 18 AAC 75.460(b)(3). “Increasing this time to 45 days or more would provide a more reasonable timeframe to distribute amended plans.”  
**Response:** Thank you for your comment.

18 AAC 75.465: Proof of approved plan:

125.	<p><b>Comment:</b> 18 AAC 75.465. Three comments were made on the new language at 18 AAC 75.465(a)(1) offering “or an electronic version if it is retrievable by the operator at all times,” as an option for providing proof of an approved plan throughout 18 AAC 75.465. One comment recommends removing the phrase “at all times.” One comment also recommends editing “original certificate” to read “original approval certificate.”</p> <p><b>Response:</b> Thank you for your comments. We have revised language in 18 AAC 75.465(a)(1) to provide clarity and remove unnecessary language, including the phrase “at all times.”</p>
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126.	<p><b>Comment:</b> 18 AAC 75.465(a)(2). While reviewing comments related to 18 AAC 75.465(a)(1) and (2) and 18 AAC 75.465(b), as well as comments in general about having documents or copies of documents available for department inspection, the department realized that 18 AAC 75.465(a)(2) included confusing and incorrect information on requirements for documents that vessel, barge, or railroad tank car operators are required to have at the facility, or in the case of the railroad tank car, available from the operator.</p> <p><b>Response:</b> In order to clarify the requirements and correct language, 18 AAC 75.465(a)(2) was repealed and readopted. The lack of clarity is now resolved in the readopted subparagraph. The readoption does not include substantive changes to this provision.</p>
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127.	<p><b>Comment:</b> Two comments voiced similar concerns at 18 AAC 75.465(b): “If logs must be retained for five years, there's no reason to state logs shall be maintained ‘on a monthly basis.’ Specifying facilities with suspended due to frozen river conditions is too specific. The requirement should be generalized to include suspension due to ‘environmental conditions.’ To avoid compliance uncertainty, notification to ADEC should be required; the word ‘may’ should be revised to ‘must.’”</p> <p><b>Response:</b> Thank you for your comments. The department agrees with removing the requirement for plan holders to retain verification logs for five years, and the regulations have been revised. We have also revised the regulatory language for suspending submittals of monthly verification logs.</p>
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18 AAC 75.470: Transfer of resources between plan holders:

128.	<p><b>Comment:</b> 18 AAC 75.470. One comment suggested a change in this section title, and one comment was made regarding the department’s approach to resource transfers and sharing.</p> <p><b>Response:</b> Comments noted. The department did not propose any changes to this section, so these comments are outside the scope of the proposed regulations. No change.</p>
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18 AAC 75.475: Notification of nonreadiness

129.	<p><b>Comment:</b> Several commenters made suggestions regarding the language in section 18 AAC 75.475 that did not address the proposed changes. In addition, one comment suggested that DEC add the requirement that DEC notify interested stakeholders via the listserv that “a notification of potential non readiness has been received and is available on the department's Internet website.” One comment expressed support for the 24 hour timeframe for notifying the department of potential non-readiness</p> <p><b>Response:</b> All comments noted and considered. Comments were not on proposed changes to the regulations at 18 AAC 75.475. No changes.</p>
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18 AAC 75.480: Inspections

130.	<p><b>Comment:</b> Comments suggest consolidating requirements in 18 AAC 75.480(e) and (f) into 18 AAC 75.480(a).</p> <p><b>Response:</b> Thank you for your comments. The regulations are structured as intended. 18 AAC 75.480(f) and (g) will not be consolidated with 18 AAC 75.080(a).</p>
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131. **Comment:** Comments on 18 AAC 75.480(b) express concern over the stated scope of inspections, request additional clarity on “virtual technology,” and suggest streamlining the requirements. Commenters provide a variety of suggestions for alternate language.  
**Response:** Comments noted. The scope of an inspection conducted under 18 AAC 75.480 includes verifying compliance with an approved oil discharge prevention and contingency plan as defined in AS 46.04.030(r).  
Inspections may be conducted by the department either in-person at the facility or virtually with department inspectors using virtual technology that is mutually agreed upon by both parties as specified in 18 AAC 75.480(e); virtual technology will not be defined at this time. The alternate language recommended by the comments does not add clarity to the proposed regulations. No change based on this comment.

132. **Comment:** Two comments suggest consolidating and simplifying the language in 18 AAC 75.480(c). Two comments express concern and request additional detail/clarity around the idea of “readily available” in 18 AAC 75.480(c)(2); one comment suggests that this is an “expansion of the responsibility of the plan holder.”  
**Response:** Thank you for your comment. The regulation at 18 AAC 75.480(c) does not add new categories of records that are required to be available at a facility for inspection, with the exception that a copy of the Blowout Contingency Plan is now required to be located at each covered exploration or production facility as described in 18 AAC 75.449(a)(7)(B). We have modified the regulations at 18 AAC 75.480(c) to clarify the requirement.

133. A number of comments were made related to proposed changes at 18 AAC 75.480(d):  
**Comment 1:** Multiple commenters requested clarification on which problem of noncompliance the department expects to identify by implementing this regulation.  
**Response 1:** The purpose of this regulation is to notify plan applicants and plan holders that the department may obtain samples of suspected contaminated materials during inspections of facilities covered by an approved oil discharge prevention and contingency plan. We have revised the regulation to include 18 AAC 75.300 – 396 and added citations to the appropriate statutory authority for this section. As some commenters point out, the department has authority to collect samples under Article 3, and we believe this makes our purpose clearer. This provides the opportunity for the department to maximize efficiency in cases where plan holders have reported a discharge, are working on containing or controlling a discharge that is not overseen by an Incident Command System, or are working under a cleanup plan approved by the department.  
**Comment 2:** Some commenters stated that adding this notice to regulations at 18 AAC 75.480 is “regulatory overreach.”  
**Response 2:** The addition of this notice in 18 AAC 75.480 allows the department to maximize its resources by allowing an inspector who is conducting a typical facility inspection to obtain a sample of suspected contaminated materials if appropriate to do so. AS 46.04.060 grants the department broad authority to conduct inspections to “ensure compliance with the provisions of this chapter.” AS 46.04.020 (Removal of oil discharges), AS 46.04.030 (Oil discharge prevention and contingency plans,) and AS 46.04.055 (Nontank vessels and railroad tank cars) are all in that chapter. The regulations implementing those statutes, Articles 3 and 4 of 18 AAC 75, fall under the inspection authority of AS 46.04.060. The presence of contamination is relevant to at least one section of each Article 3 and Article 4. Future amendments to those Articles may result in additional sections that are informed by sampling for contamination. The phrase “as applicable” ensures any sampling must be relevant to determining compliance with a section of Article 3 or 4.

	<p><b>Comment 3:</b> One commenter expressed concern over samples potentially being taken on documented contaminated sites that are under strict sampling requirements.</p> <p><b>Response 3:</b> The sampling requirements are established by the department regulations in Article 3, and inspectors will verify the status of a facility prior to conducting an inspection.</p> <p><b>Comment 4:</b> Commenters point out that if contamination is found, it is not necessarily evidence of a violation.</p> <p><b>Response 4:</b> The commenters are correct, but also, conversely, the presence of contamination may indicate a violation of spill notification requirements in 18 AAC 75, Article 3 or the spill notification requirements included in the Response Action Plan of an ODPCP.</p> <p><b>Comment 5:</b> A commenter asked what the consequences are if contamination is found.</p> <p><b>Response 5:</b> There are no new enforcement actions associated with this regulation. Enforcement authorities and potential outcomes may be found in AS 46.04.030, AS 46.04.040, 18 AAC 75, Article 3, and 18 AAC 75, Article 4.</p> <p><b>Comment 6:</b> Commenters requested that the department add language to the regulation stating that results of any sample analyzed will be shared with the plan holder or that split samples will be made available for independent analysis.</p> <p><b>Response 6:</b> The department does not restrict any facility operator from taking samples alongside its inspectors. We intend to share results with facility owners, but we do not agree it is necessary to specify that process in the regulation.</p> <p><b>Comment 7:</b> Multiple commenters question whether department inspectors are also qualified samplers.</p> <p><b>Response 7:</b> The department’s inspectors will be qualified to collect the samples they may find are necessary to collect.</p>
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134.	<p><b>Comment:</b> Two comments request additional clarity and details in guidance or regulation regarding virtual inspections described at 18 AAC 75.480(e).</p> <p><b>Response:</b> Thank you for your comments. We have revised 18 AAC 75.480(e) to clarify that use of virtual technology will be agreed to by the facility owner or operator and the department on a case-by-case basis.</p>
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135.	<p><b>Comment:</b> Two comments request that the department add a timeframe for sharing an inspection report with the operator to 18 AAC 75.480(g).</p> <p><b>Response:</b> Comments noted. Timeframes for the inspection report, including action under 18 AAC 75.490, will vary based on findings. No change.</p>
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18 AAC 75.485: Discharge exercises and the Exercise Manual

136.	<p><b>Comment:</b> 18 AAC 75.485. One commenter asks DEC to commit to a timeline for delivering a report on the exercises and suggests 60 days. Additional comments request adding detail about what must be contained in the After Action Report.</p> <p><b>Response:</b> These comments request additions to the regulations. The department has considered the additions and has determined not to incorporate a timeline for the department to deliver a report on the exercise or to specify what must be contained in the After Action Report into the regulation.</p>
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137. **Comment:** Many comments were submitted about the number of exercises the department requires under the revised regulations at 18 AAC 75.485, and comments included proposals to revise regulations. Some commenters support establishing a minimum number of exercises for plan holders, but they expressed concern that there was a reduction in the overall number of exercises that the department could conduct each year for a plan holder. One commenter stated that having to coordinate with the department on one exercise in five years was too burdensome for plan holders. Some commenters recommended increasing the number of exercises the department could conduct beyond the minimum per year. Many also noted that they did not agree that the established minimum number of exercises was adequate for the risk posed by crude oil operations, and they proposed revising the requirements to increase the number and specify the type of exercises required for crude oil operators. Commenters also asked that the department reinstate its requirement that additional exercises will be held if a plan holder's execution of their plan is inadequate during an exercise. Finally, some commenters stated that that department staffing may be a problem for conducting the number of exercises required by regulation or that they would like to see conducted.

**Response:** Thank you for sharing your concerns. The proposed regulations establish a new minimum number of exercises that applies to all regulated operators: each ODPCP holder is required to conduct one operations-based exercise during each five year plan cycle. Current regulations state that the department can require up to two exercises per year. In the proposed regulation, the department may require one exercise per year in addition to the one minimum required operations-based exercise during each plan cycle. While this is a decrease in the maximum number of exercises the department may require, it is appropriately balanced by the new minimum exercise requirement for all ODPCP holders, whether they are crude or non-crude operators. Additionally, the regulations specify that if a plan holder cannot adequately execute their plan during an exercise, the department may require additional exercises until the department is satisfied. The provisions regarding the number of exercises remain as proposed, with clarifying edits.

138. **Comment:** 18 AAC 75.485. A number of comments were received on the topic of allowing exercises to count for more than one ODPCP, particularly for deployment exercises if certain conditions are met and on ways for plan holders to gain efficiencies in meeting the minimum number of exercises required. Comments also request that the department add the option for regional or area-wide exercises in the same regions to pool resources and consolidate planning efforts.

**Response:** Thank you for your comments. DEC believes that a minimum of one exercise every five years for each ODPCP holder is appropriate. As noted in the Other Exercise Methods Section of DEC's Exercise Manual, DEC encourages innovation and improvement in developing exercise methods to meet 485 requirements. There may be other types of exercises that could be developed to meet DEC 485 exercise requirements as long as coordination and approval is obtained from DEC in advance of the exercise to ensure 485 exercise criteria are met. On the topic of deployment exercises, clarifying language has been added to the Other Exercise Methods section of the Exercise Manual to note that DEC may consider allowing deployment exercises to count for more than one ODPCP on a case-by-case basis if the Primary Response Action Contractor, response strategies and tactics and operating environment would be the same for each plan holder.

DEC's exercise requirements are focused on ensuring each ODPCP is adequate in content and execution. Area-wide or regional exercises are conducted under the authority of our federal partners rather than state statutes. Very often, ODPCP-specific objectives are included in federal area exercises. We will keep your recommendation in mind in our collaborations with our federal partners.

139. **Comment:** 18 AAC 75.485. Comments request that the regulations describe boundaries to the requirements for exercises and their scope, especially by defining the terms "significantly deficient" and "inadequate". Comments about exercise scope note that "The contingency plan is a planning standard not a performance standard."

**Response:** Thank you for your comments. Many variables influence actions taken during oil discharge exercises. The Exercise Manual includes a common framework for exercise design, evaluation criteria, and development of corrective actions. It is not appropriate or practical to remove judgement from consideration of whether mobilization or performance of personnel, equipment, or other resources are significantly deficient or inadequate to meet exercise objectives developed by the Exercise Planning Team. Consistent with statutes at AS 46.04.030(j), these regulations establish planning standards, not spill response performance standards. No changes made.

140. **Comment:** 18 AAC 75.485. “Clearly define what ‘corrective actions’ will encompass if a plan holder is determined to be inadequate or significantly deficient.”  
**Response:** Thank you for your comment. Corrective actions are determined on a case-by-case basis and cannot be pre-defined. Corrective actions for an exercise could range from updating an ODPCP procedure to entering into a compliance order by consent. No change made.

141. **Comment:** General concern from two commenters regarding 18 AAC 75.485: Discharge Exercises “Plan holders remain concerned that the regulation does not provide any limitations to the scope of an exercise. This creates ongoing uncertainty with regard to business planning processes.”  
**Response:** Thank you for your comments. Every exercise is unique, with specific methods, scope, objectives, evaluation criteria, etc. These exercise specifics are developed by the exercise planning team during the initial planning phases. The Exercise Planning Team is composed of representatives from the ODPCP holder, DEC and other state and federal agencies. In most cases, the ODPCP holder representative serves as the Lead Exercise Planner and in all cases whether they serve as lead or not, they have a voice in developing the exercise scope, objectives, and evaluation criteria along with the rest of the planning team. It is not practical or best practice to pre-establish exercise scope, objectives, and evaluation criteria. No change made.

142. **Comment:** 18 AAC 75.485(c). Two comments were made stating that the self-certification form referenced at 18 AAC 75.485(c) was not made available for public comment, and it should be included as part of the public comment process. One commenter requests that “that the department provide the proposed form as part of a supplemental public notice and extend the public comment period to allow for proper review.”  
**Response:** Thank you for your comments. Plan application and related forms are not part of the public notice process. The self-certification form for noncrude oil tank vessels or barges with a streamlined plan will be provided on the department's website as stated in the Editor's Note for 18 AAC 75.485.

143. **Comment:** A comment suggests to revise 18 AAC 75.485(e) so that an exercise will count as a 485 exercise if the plan holder provides the opportunity for department participation vs. [department participates].  
**Response:** Comment noted. Department involvement is a requirement for 485 exercises. No change.

144. **Comment:** 18 AAC 75.485(g)(1). “ADEC should remove reference to Homeland Security Exercise and Evaluation Program in proposed sections 18 AAC 75.485(a)(1)(A) and .485(e).”  
**Response:** Comment noted. The HSEEP process allows for flexibility and scalability. We have removed the definition of “Homeland Security Exercise and Evaluation Program” since it is defined in the DEC Oil Spill Response Exercise Manual, adopted by reference. No other changes.

145.	<p><b>Comment:</b> 18 AAC 75.485. Several comments expressed concern that plan holder's regularly scheduled training or practice exercises would need to follow the planning and development processes outlined in HSEEP and the Exercise Manual, including ensuring participation of DEC in each training program event. Comments expressed concern that such restriction would undermine effective training programs that include internal exercises.</p> <p><b>Response:</b> Thank you for your comments. Regularly scheduled exercises for the purpose of training should be part of an ODPCP's training program required by 18 AAC 75.451(j). Training exercises, sometimes called practice exercises, are distinct from exercises required under 18 AAC 75.485 and are not required to be planned or executed in accordance with 18 AAC 75.485 or the Exercise Manual. Plan holders may convert a training exercise into a 485 exercise as outlined in 18 AAC 75.485(e) of the proposed regulation (renumbered to 18 AAC 75.485(f) in the final regulations version). No change.</p>
146.	<p><b>Comment:</b> 18 AAC 75.485. One commenter requests that the regulations define the term “operations-based exercise” (instead of just in the Oil Spill Response Exercise Manual). “The phrase ‘operations-based exercise’ should also be added to 18 AAC 75.485(a)(1)(B) to clarify that all exercises considered under this portion of the regulations should meet this broadly defined term?”</p> <p><b>Response:</b> The Exercise Manual describes what an operations-based exercise is. The department has chosen not to add a definition to the regulations text; as the regulations state at 18 AAC 75.485(a)(1)(A) and (a)(2) of the proposed regulation (renumbered to 18 AAC 75.485(b)(1)(A) and (b)(2)(A) of the final regulations version), the exercise must be an operations-based drill as described in the department’s Oil Spill Response Exercise Manual.</p>
147.	<p><b>Comment:</b> 18 AAC 75.485. “PWS plan holders conduct an annual large-scale exercise in the region on a rotational basis among the various companies. The scenario of these exercises has traditionally focused on an RPS-sized spill. However, plan holders and the response community in general could benefit from a more varied approach to exercise design such as conducting exercises that focus on more likely spills, namely smaller-scale potential incidents.”</p> <p><b>Response:</b> The regulations at 18 AAC 75.485 provide opportunity for variation in design of agreed-upon exercise scenarios in fulfillment of exercise requirements. No change.</p>
148.	<p>Commenters expressed additional concerns over exercise requirements in 18 AAC 75.485:</p> <p><b>Comment 1:</b> “The major crude oil plan holders operating in the state conduct dozens of preparedness and response exercises yearly within the state and do so without ADEC involved in the pre planning and organization of the exercise. The current ADEC structure and staffing does not provide adequate time for ADEC to be involved in the preplanning of dozens of exercises conducted by industry; at best ADEC may observe a small portion of these events. 18 AAC 75.485(e) require the plan holder to implement the Homeland Security Exercise and Evaluation Program (HSEEP) methodology, by adding language requiring these evaluations to be provided to ADEC, they can be used in collaboration with industry and other regulators, to determine if additional exercises should be conducted and what plan areas should be included in a N-PREP (one exercise every three years) or the one exercise allowed by the proposed regulations.”</p> <p><b>Response 1:</b> Thank you for your comment. No requirement will be added to require plan holders to provide documentation for exercises in which the department does not participate.</p>



**Comment 2:** “Oil spill drills and exercises should account for the real world conditions that we experience in Cook Inlet with large tides, heavy sea ice, and long stretches of darkness. To the extent that spills and drills are only occurring during optimum conditions, they are not demonstrating preparedness during most of the year when an accident is likely to occur. Unfortunately accidents do not wait for optimum conditions and we should be prepared for that.”

**Response 2:** Thank you for your comment. Planning standards require plan applicants to define realistic maximum response operating limitations (RMROL) that include seasonal and other conditions. Exercises are conducted in the conditions of the day; however, the department does not expect or require plan holders to deploy equipment when it is not safe to do so. Oil discharge prevention and contingency plans are required to identify temporary prevention and response measures for when RMROL conditions exist, and if that occurs during a scheduled exercise, the plan holder may be required to describe how they would implement those measures to reduce the environmental consequences of a discharge.

149. **Comment:** 18 AAC 75.485. Several comments were received on the topic of PREP, asking why DEC no longer allows PREP and asking that the department adopt it.

**Response:** Thank you for your comment. DEC's regulatory revisions and the Exercise Manual do not restrict the use of PREP. Both DEC's regulatory revisions and Exercise Manual provide avenues for a PREP exercise to count as a 485 exercise, and vice versa.

150. **Comment:** 18 AAC 75.485. “Allow ‘credit’ for actual spill events to be used to meet some exercise components, which is in line with PREP allowances.”

**Response:** Thank you for your comment. Department practice is to grant exercise credit for spill response activities upon review of whether the response conducted is similar in scale and scope to the response planning strategies in the ODPCP. If the response revealed implementation gaps, that may drive the need for another exercise. We have added the option for an actual response to count for a planned exercise or for components of a planned exercise upon department review and approval to the Other Exercise Methods section of the Manual.

151. **Comment:** Regarding 18 AAC 75.485:

- “Physically moving people or equipment to remote locations may also temporarily hinder a PRAC/OSRO groups ability to response region-wide.”
- “If it is the State’s intent to determine these details during the exercise planning process, please address how the State will ensure consistency of application across all regions and control costs.”
- “How will the perceived value to the drill exercise be evaluated as compared to cost to the host plan holder? For example mobilizing ten trained PRAC spill responders to Juneau would be significantly less expensive than mobilizing ten trained PRAC spill responders to Saint Paul Island.”

**Response:** The purpose of the Exercise Manual is to ensure process consistency. There are no pre-established requirements for PRACs to physically move people or equipment to remote locations. However, the Exercise Planning Team, which includes representation from the ODPCP holder, may choose to mobilize PRAC resources to support exercise objectives. No change made.

152. **Comment:** 18 AAC 75.485. Numerous comments were received on the topic of DEC staffing levels.

- 1) Scheduling exercises around DEC staff availability on a statewide calendar will create a bottleneck;
- 2) Impacts on a company's ability to provide fuel to rural communities during the busy summer months;
- 3) The availability of DEC staff to participate in the exercise planning process and
- 4) Availability of DEC staff to fill identified state ICS roles.

**Response:** Thank you for your comments.

- 1) The DEC exercise scheduling calendar, located on the department's website, was developed in response to requests from industry and federal agency partners. It has proven to be beneficial in achieving scheduling goals for both DEC and ODPCP holders.
- 2) Exercise scheduling is coordinated between DEC and the ODPCP holder in advance of the exercise and operational needs will be considered. Not all exercises need to occur in the busy summer months.
- 3) DEC intends to participate in the exercise planning process as a member of the Exercise Planning Team.
- 4) The ICS organizational chart provided in the Exercise Manual is intended to show all of the possible roles DEC and state staff may play in an exercise. DEC participation in exercises is scalable depending on the needs of the exercise. No changes made.

153. **Comment:** 18 AAC 75.485. One comment questioned the participation and role of State of Alaska employees outside of the Prevention, Preparedness and Response Program. Commentor questioned their ability to conduct a fair evaluation or participate in the Incident Management Team.

**Response:** Thank you for your comment. Exercise evaluation guides are developed by the Exercise Planning Team during the design phase of the exercise. The Exercise Planning Team is comprised of representatives from the ODPCP holder, DEC and other state and federal agencies. In most cases, the ODPCP holder representative serves as the Lead Exercise Planner and in all cases whether they serve as lead or not, they have a voice in developing the exercise evaluation guides. Development of exercise evaluation guides ensures the objectives exercised are evaluated adequately and according to established guidelines. No change made.

154. **Comments:** Supportive comments regarding changes at 18 AAC 75.485 were received as follows:

- Oil Spill Response Exercise Manual: “The manual is very comprehensive and certainly provides valuable guidance for the conduct of oil spill response exercises for ADEC, planholder, and PRAC.”
- Commenter supports change at 18 AAC 75.485(e) to include reference to PREP exercises.
- “18 AAC 75.485(a)(1)(B). This proposed added requirement retains the potential for an ADEC announced or unannounced exercise during the year, but reduces it from two to one. It is recognized that in each 5-year plan approval cycle the ‘annual’ exercise would be in addition to an exercise required under (A) of this subsection. The language suggests an ‘annual’ exercise is not specifically required; this is commendable. Therefore, the expected number of exercises for an oil discharge prevention and contingency plan in each 5-year plan approval cycle is a minimum of one (e.g., an ‘operations-based’ exercise under (A)), and a maximum of six.”
- “18 AAC 75.485(g)(2). This information is appropriate because many plan holders maintain plans that also comply with federal oil spill response requirements that require exercises in accordance with National Preparedness for Response Exercise Program requirements.”

**Response:** The department appreciates your feedback.

155. Comments suggesting minor edits to the language in 18 AAC 75.485:

**Comment 1:** 18 AAC 75.485(a)(1)(A): “Recommend revising as follows: (A) the department will conduct one operations based discharge exercise for each 5-year plan approval cycle in coordination with the plan holder; **the exercise will be conducted in accordance with** ~~based on the Homeland Security Exercise and Evaluation Program methodology described in the department’s Oil Spill Response Exercise Manual, MONTH, XX, 202X, adopted by reference adopted in (e) of this section, and”~~

**Response 1:** Comment considered. No change made. The referenced regulation has been renumbered 18 AAC 75.485(b) in the final version.

	<p><b>Comment 2:</b> 18 AAC 75.485(b): request to use the term <b>oil spill primary</b> response action contractor</p> <p><b>Response 2:</b> Thank you. Correction made. The referenced regulation has been renumbered 18 AAC 75.485(c) in the final version.</p> <p><b>Comment 3:</b> 18 AAC 75.485(d) and (d)(1).” Should the word ‘noncrude’ be used here? If applicable, recommend removing the word ‘noncrude.’”</p> <p><b>Response 3:</b> Thank you. Correction made. The referenced regulations have been renumbered 18 AAC 75.485(e) and (e)(1) in the final version.</p>
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Exercise Manual

156.	<p><b>Comment:</b> Numerous commentors noted they do not support adoption of the department’s Oil Spill Response Exercise Manual into the regulation. One comment asks whether the manual would become “enforceable” if adopted by reference.</p> <p><b>Response:</b> Comments noted. Manuals or other documents adopted by reference into regulations are part of the regulation, subject to public review, and enforceable after adoption. The Exercise Manual is adopted by reference into the regulations as proposed, although there have been numerous edits in response to public comments.</p>
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157.	<p><b>Comment:</b> One commenter made comments on a previous version of the Exercise Manual, and not the 2021 draft version included with the public notice.</p> <p><b>Response:</b> The department noted but did not consider comments that were not relevant to the Exercise Manual submitted for public review. All comments that apply to content of the Exercise Manual under public review have been considered.</p>
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158.	<p><b>Comment:</b> Numerous comments were received regarding whether the department was skirting the public process and not allowing public comment on the Exercise Manual if adopted by reference. Comments further expressed concern that the Exercise Manual might be updated at any point without public review.</p> <p><b>Response:</b> Thank you for your comments. Documents adopted by reference in a regulation are required to be noticed to the public for review and comment. The public notice for this regulation project included the following notice: “(25) repeal and readopt 18 AAC 75.485 - Discharge exercises to update requirements for discharge exercises and to adopt by reference the department's Oil Spill Response Exercise Manual.” The Exercise Manual was provided for public review and comment. For a document that has been adopted by reference as a specific version, public notice must be given to update the document, and the updated document must be made available to the public for review and comment.</p>
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159.	<p><b>Comment:</b> Several comments were received regarding undue burden that will be caused by the projected exercise planning timeframe periods presented in DEC’s Exercise Manual. One commenter noted that requiring DEC participation in exercises to meet 485 exercise requirements will be overly burdensome.</p> <p><b>Response:</b> The typical planning period timelines presented in the Exercise Manual range from two to 12 months, depending on the exercise method and the scale and complexity of the exercise. The planning timeframes do not represent a continuous workload but rather an estimated planning period in which to coordinate and plan for an exercise. DEC's regulations set a minimum requirement of one operations-based exercise per five-year plan approval cycle with DEC participation. The department believes this minimum requirement is appropriate. No change made.</p>
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160.	<p><b>Comment:</b> One comment requests the deletion of the Exercise Manual acknowledgements page for brevity. A second comment requests deleting portions of the preface.</p> <p><b>Response:</b> Comments noted. The Exercise Manual was updated to remove listing of stakeholders who participated in the input process. We retained language acknowledging HSEEP and the influence of International Petroleum Industry Environmental Conservation Association – International Association of Oil and Gas Producers (IPIECA – IOGA) Oil Spill Exercises guidelines and its application of HSEEP to oil spill response programs. No change made to the preface.</p>
161.	<p><b>Comment:</b> Exercise Manual: “Provide clarity on what is considered an objective. Does this refer to an objective for the exercise or an objective within the ICS 202? If it an objective for the exercise, this should already be worked out through the plan holders ability to shut down operations in their ODPCP.”</p> <p><b>Response:</b> Thank you for your comment. Language clarified to specify “exercise objective.”</p>
162.	<p><b>Comment:</b> Exercise Manual. “Clearly define what role PRAC/OSRO contractors are expected to perform to meet defined outcomes.”</p> <p><b>Response:</b> Thank you for your comment. The role of the PRAC is dependent on the role described in the ODPCP. Exercise objectives and evaluation criteria are developed by the Exercise Planning Team. If the exercise objectives and evaluation criteria include the PRAC implementing ODPCP tactics, they are expected to do so during the exercise. No change made.</p>
163.	<p><b>Comment:</b> A commenter requests that DEC allow discussion-based exercises. “The Exercise Manual prohibits ‘discussion-based exercises’ however there are many components of a drill exercise that are impractical and costly if not deployed for an actual event.”</p> <p><b>Response:</b> Thank you for your comment. While HSEEP discussion-based exercises do not meet DEC 485 exercise requirements due to their non-demonstrative format, we encourage plan holders to incorporate them into their training programs. HSEEP operations-based exercises often have simulated components. For example, HSEEP operations-based functional exercises are often IMT exercises with no field deployment component. No change made.</p>
164.	<p><b>Comment:</b> Comments on aligning language with HSEEP nomenclature in the Exercise Manual:</p> <ul style="list-style-type: none"> <li>• Regarding the phrase: “The ODPCP holder will normally assume the role of lead exercise planner,” use “Planning Team Lead and/or Exercise Director.”</li> <li>• Change header: “Planning Team Meetings” to “Planning Team Meeting Types” “to align with HSEEP”</li> </ul> <p><b>Response:</b> Thank you for your comments. Change made to replace the phrase “lead exercise planner.” The header was changed to “Exercise Planning Meetings,” which is consistent with HSEEP terminology.</p>
165.	<p>Two comments were made regarding the use of “SimCell” and “truth” in the Exercise Manual:</p> <p><b>Comment 1:</b> “Recommend removing all the parentheticals in this sentence and revising as follows: ‘Role players in a Simulation Cell (SimCell) can inject scenario elements to simulate real events.’”</p> <p><b>Response 1:</b> Thank you for your comment. Edited as appropriate.</p> <p><b>Comment 2:</b> Exercise Plan bulleted list. “This document continuously references the SimCell with Truth. They are two different things and can be run independently or Truth be found within the SimCell. Clarify Truth as being part of the SimCell or separate the two”</p> <ul style="list-style-type: none"> <li>• “Page 26 first line SimCell (or Truth) Remove (or Truth). Truth is part of the SimCell. These are not interchangeable”</li> <li>• “page 27 Under Exercise Control, second line ‘(SimCell or Truth)’: Remove (SimCell or Truth). The header Exercise Control is adequate.”</li> </ul>

• “page 27 Second Paragraph under Exercise Control. Line 2/3 delete (SimCell or Truth): Remove (SimCell or Truth), This is redundant to Exercise Control.”  
**Response 2:** Thank you for your comment. Edits have been made to remove “or truth” where relevant. The concept of “ground truth” has been added to the glossary and text as appropriate to align with HSEEP terminology.

166. **Comment:** “In the Exercise Manual, remove ‘While ADEC does not expect each step of each phase to be applied to every operator, application of the methodology should be coordinated with the ODPCP reviewer.’ If the planning team is truly collaborative, then application of the methodology should be reviewed by the exercise planning team, not the ODPCP reviewer. The ODPCP reviewer is the expert in the ODPCP, not necessarily HSEEP.”  
**Response:** Thank you for your comment. Edited to clarify that the DEC ODPCP reviewer serves as DEC's representative on the planning team, in part to ensure that the exercise will meet DEC 485 exercise requirements.

167. **Comment:** Exercise Manual: A comment was received on the bullet colors in the Exercise Planning Task List recommending that all bullets be made black.  
**Response:** Thank you for your comment. Change made.

168. **Comment:** In the Exercise Manual:  
• “It is held to develop the scope and objectives of the exercise.” “Remove. It is a Concept and Objectives meeting, not a Scope and Objectives meeting.”  
• “The exercise planning team, including the ADEC exercise planner, will attend concepts and objective meetings along with any subject matter experts needed to develop the scope and objectives of the exercise.” “Change scope to concept.”  
**Response:** This language in the Exercise Manual is consistent with HSEEP. No change made

169. **Comment:** Comments were received regarding the use of the phrase “functional/tabletop exercises” in the Exercise Manual. “A Functional Exercise is operations-based while a Tabletop Exercise is discussion-based. Recommend using definitions in alignment with HSEEP and shifting away from current confusion in the Alaska Spill Response Community.”  
Table 6: “Remove ‘Tabletop’ and use ‘Functional Exercise’ to align with HSEEP.”  
**Response:** Thank you for your comments. While these comments apply to the previous version of the document, we edited the relevant paragraph to ensure clarity surrounding the use of “tabletop exercises” by the Alaska response community, and made changes to the relevant text in Table 10 (2018 Table 6).

170. **Comment:** Regarding the Exercise Manual: “In the first line the document indicates that the planning team develops controller and evaluator packets. This is in addition to the Controller and Evaluator Handbook. Recommend combining these two as there is duplication.”  
**Response:** Thank you for your comment. Change made.

171. **Comment:** Exercise Manual: “Preparation of the MSEL bulleted list is too comprehensive. A typical MSEL will include the following items: Deployment timeframe; Actual Time (to be filled in at the exercise); Event Description; Inject Delivered By (i.e. phone, text); Recipient Player; Expected Outcome; Actual Outcome. Recommend revising bulleted list.”  
**Response:** Thank you for your comment. Changes made to align with current version of HSEEP.

172.	<p><b>Comment:</b> Exercise Manual: “‘There is a strong correlation between the assignment of knowledgeable evaluators in sufficient numbers and the value of the improvement planning phase.’ Remove. While this is likely true, ADEC provides no data to qualify this statement and there is no tracking history from this document to demonstrate this is the case.”</p> <p><b>Response:</b> Thank you for your comment. Language has been revised to state “Whenever possible, evaluators and note takers should have experience and subject-matter expertise in their assigned functional area.”</p>
173.	<p><b>Comment:</b> Exercise Manual: “‘The ADEC ODPCP reviewer will track the corrective actions identified in the ADEC Exercise letter to completion, ensuring that the exercise yields tangible oil spill response preparedness improvements, the ODPCP is complete, and the ODPCP holder is capable of adequately executing the ODPCP.’ Please provide a description of how this is accomplished and how it is communicated to the plan holder.”</p> <p><b>Response:</b> Thank you for your comment. The DEC ODPCP reviewer tracks exercise corrective actions via written documentation and communicates with the ODPCP holder as appropriate via written communication. No change made.</p>
174.	<p><b>Comment:</b> Exercise Manual: “‘The IPIECA-IOGA document is not easily found when searched. Please provide the URL.’”</p> <p><b>Response:</b> Thank you for your comment. The IPIECA-IOGA document is listed in the references section and a URL is provided.</p>
175.	<p><b>Comment:</b> Exercise Manual: “‘Consistent with HSEEP methodology, we recommend developing evaluation criteria from the exercise objectives, which for oil spill response exercises are based upon components of an approved ODPCP.’ Objectives can easily be outside of the content of the ODPCP to be effective. One such objective many are exercising right now is to implement a virtual command post. Objectives are set to create a stronger response team and a seasoned plan holder may have already demonstrated ODPCP requirements. This can include pieces of your ODPCP if a gap is identified but it should not have to or the Department will get the same objectives over and over again.”</p> <p><b>Response:</b> Thank you for your comment. Regardless of whether DEC initiates an oil spill response exercise, or the plan holder conducts an exercise to meet DEC requirements, the primary objective under department regulations is for the plan holder to demonstrate the ODPCP or streamlined plan is adequate in content and that it can be carried out by the operator. This section notes “the information provided is not intended to restrict or limit the exercise scope or objectives, circumvent or limit ODPCP holder obligations, or predefine exercise evaluation acceptance criteria. Rather, the information is offered to foster dialogue between the ODPCP holder and the DEC ODPCP reviewer.” No change made.</p>
176.	<p><b>Comment:</b> Exercise Manual: “‘Wherever this document mentions Local On-Scene Coordinators (e.g., page 17 under FullScale/Combined IMT and Field Exercises), it should also mention Tribal On-Scene Coordinators since this role, recently introduced in Alaska planning, warrants attention in exercises.’”</p> <p><b>Response:</b> Thank you for your comment. Change made.</p>
177.	<p><b>Comment:</b> Exercise Manual: “‘Please also add mention on page 36 of the fact that RCACs may participate in the Evaluation Team (as noted, this group will typically ‘mirror that of the planning team’). Also, [Commenter] suggests fixing a typo on page 28 (moving the word ‘plan’ in the sentence, ‘ADEC strongly supports and encourages plan ODPCP holders to do this, as the benefits are many’)”</p> <p><b>Response:</b> Thank you for your comment. The sentence with the typo has been removed. As stated in the Exercise Manual, additional evaluators may be added based on the scope and objectives of an exercise.</p>

178. **Comment:** Exercise Manual: “The HSEEP tables are concise and provide clarity to the meeting process. Referring the reader to an additional document is cumbersome. Insert the meeting components tables from HSEEP. If HSEEP is updated and the document is repaginated these references are no longer valid.”  
**Response:** Thank you for your comment. The HSEEP Planning Meeting tables have been incorporated more fully as suggested. Change made.

179. A large number of comments were received with language suggestions for the Exercise Manual. Thank you for your comments.  
**Comment:** [in Table 4] “Add verbiage to clarify that this is applicable to the plan holder's plan or the plan holder's IMT. Some companies have multiple plans and a single IMT.”  
**Response:** We reviewed the verbiage in Table 8 (former Table 4). No change.

**Comment:** “Although ADEC reserves the right to plan and conduct an announced or unannounced exercise of an ODPCP holder, under most circumstances...” “Remove. This is already covered in Table 1.”  
**Response:** No change.

**Comment:** “Remove scare quotes from around the word count. Usually, this implies that the author doesn't agree with the use of the term”  
**Response:** Change made.

**Comment:** Remove: “ADEC Unannounced Exercises ADEC may conduct an unannounced exercise to test a specific portion of the ODPCP. Unannounced exercises will not appear on the exercise schedule. ADEC may choose to work with someone from the ODPCP holder’s organization as a trusted agent to coordinate the exercise. A trusted agent is an individual on the exercise planning team that is trusted to not inform the players of the exercise or scenario.” “This is already covered in Table 1”  
**Response:** Edited for brevity. Overall content is retained.

**Comment:** “Acronyms should be spelled out on first reference. Change ‘A MSEL (see glossary)’ to ‘A Master Scenario Events List (MSEL)’ and use MSEL thereafter. Relevant text: ‘A MSEL (see glossary) may be used to guide controllers”  
**Response:** Comment is incorrect; MSEL is spelled out at first use. No change.

**Comment:** “Change ‘Exercise Joint Planning Team’ to ‘Exercise Planning Team’ for consistency with HSEEP and the rest of the document. Change ‘ADEC or other state agencies’ to ‘ADEC and other state agencies.’ Change ‘USCG, EPA, or other federal agencies’ to read ‘representative from the Federal On-Scene Coordinator area of responsibility (EPA or USCG) and supporting federal agencies.”  
**Response:** Changes made.

**Comment:** “Remove the words ‘if avoidable.’ They are redundant to the rest of the sentence. ‘If avoidable, planning team members should not participate as players in the exercise, however they may serve as evaluators (examples of exceptions to this include drills of limited scope or scale and functional exercises where one staff person from ADEC and the ODPCP holder are sufficient for exercise evaluation”  
**Response:** No change made.

**Comment:** “Change ‘ADEC may need to add objectives and evaluation criteria to the planning effort to address specific ODPCP components.’ to ‘ADEC may need to request additional objectives and evaluation criteria to the exercise to address specific ODPCP components.” “The exercise belongs to the plan holder. This is a guidance document for the exercise program, not the ODPCP.”

**Response:** Change made to clarify that for an exercise to count as an DEC 485, DEC may need to add objectives and evaluation criteria to the planning effort to address specific ODPCP components.

**Comment:** “Change to ‘Exercise Objectives For ADEC, the overarching objective of a 485 exercise is to ensure that an ODPCP...”

**Response:** The Exercise Manual has been reviewed and edited to ensure that correct phrasing is used.

**Comment:** “Remove the word ‘master’ in front of scenario to avoid confusion with the MSEL. Remove the words ‘from Alaska’ as not all players are from Alaska. Remove single quotes around ‘the scenario’. Remove ‘This ensures that an exercise is adequately simulated to allow player opportunity to meet an objective.’ This will not ensure objectives are met.”

**Response:** As appropriate, removed the word “master” and clarified language.

**Comment:** “Change ‘master scenario’ to scenario. Unbold and uncap ‘should not.’ Delete scare quotes around ‘scripts.’ If kept, this should read: The scenario should not be provided to the exercise players. Players should receive an appropriate description of the spill incident and any initial actions that have occurred up to the start of the exercise. If the players are provided with the scenario that is within the hands of the controllers, the elements of oil spill response decision making may lead to the exercise becoming more of a show than a true demonstration of capabilities. Exercise controllers have the important task and challenge of making sure that scenario information is made available to players in a timely and realistic manner, but not so much that it scripts the actions of the exercise players”

**Response:** As appropriate, removed the word “master” and clarified language. Removed unnecessary emphasis.

**Comment:** “Visual renditions of the simulated spill scenario are useful for exercise conduct initiation”  
“Change to: •Trajectories and modeling of the simulated spill scenario are useful for exercise conduct initiation.”

**Response:** No change made.

**Comment:** “• Scenarios should include spill locations, estimated volumes, and a qualitative description of the simulated spill along with any technical details, (i.e., will detailed facility diagrams be needed?)”  
“Remove (i.e., will detailed facility diagrams be needed?). It is extraneous.”

**Response:** Language clarified.

**Comment:** Table 7 text “Master Scenario Events List (as warranted).” “Remove (as warranted)”

**Response:** Change made.

**Comment:** Footnote: “\*Documents complexity and substance should be scaled to align with the scope of exercise.” “This is extraneous and recommend removing.”

**Response:** No change made.

**Comment:** “Header: Preparation of the MSEL.” “Change to Master Scenario Events List to align with document name formats in the section.”

**Response:** Change made.

**Comment:** “First line under Planning for Exercise Control reads ‘As described in more detail under the Exercise Conduct section ...’ Change ‘Exercise Conduction section...’ to the actual name of the section which is ‘Conducting the Exercise.’”

**Response:** Change made.

**Comment:** “Under Planning for Exercise Control” “The exercise belongs to the plan holder and therefore the plan holder in charge of exercise control and ultimately the outcome of the exercise lands on their shoulders. To put the control on all levels of the planning team would create chaos. If the planning



team has done their job properly and cooperatively developed the MSEL then there is no need for all entities to provide exercise control. Exercise control is generally completed by experts in the field they are controlling (i.e., the OSRO controls operations). This make up for exercise control is inappropriate. Remove 'It is recommended that the controller team and the evaluator team makeup is consistent, e.g., include one representative each from the ODPCP holder, ADEC, and EPA or USCG (mirroring that of the joint planning team). The lead exercise planner typically serves as the lead exercise controller coordinating the scenario progression. Key elements of exercise control include controller safety and security, staffing, structure, training, and communications.'"

**Response:** It is our recommendation that the control team mirror the planning team makeup. This does not diminish the plan holder's responsibility for the exercise. We have edited the text for clarity without changing the intent.

**Comment:** "Second Paragraph under Exercise Control. 'Scaled to meet the needs of the exercise, exercise control may not always be needed.'" "Dependent clauses need to be next to what they modify. In this case the exercise is being scaled, not exercise control. "Change this to read 'Exercise control may not always be needed.'"

**Response:** The language has been edited.

**Comment:** "Second paragraph under Exercise Control" "Remove 'For exercises such as a drill, little control may be needed.' This is redundant and there is noun disagreement, exercises (plural) vs. a drill (singular)."

**Response:** The language has been edited.

**Comment:** "Second Paragraph under Exercise Control. 'exercise scenario: ultimately providing opportunity'" "Change the colon to a comma"

**Response:** The punctuation has been revised.

**Comment:** "Third Paragraph under Exercise Control. 'To ensure the exercise does not stall or deviate from the scenario design parameters, the lead exercise controller and supporting controllers should gauge the flow of exercise information and injects to the exercise players and the activities of IMT Units. This also serves to keep players engaged and provide the ability to troubleshoot problems that may arise'" "Remove 'To ensure the exercise does not stall or deviate from the scenario design parameters,' as it is redundant. Remove Units after IMT as there are sections, branches and divisions in addition to units."

**Response:** We removed the word "Unit," but we have retained the introduction language in the sentence for context.

**Comment:** "Fourth paragraph under Exercise Control 'The exercise control structure will describe how exercise controllers communicate and coordinate with one another and how they track exercise information.'" "This is redundant and there is verb confusion. Change to 'Exercise Control will determine and communicate how exercise information is tracked.'"

**Response:** Small clarifying change made.

**Comment:** "Under Evaluation of the Exercise 'During the exercise, each evaluator uses the EEGs prepared during the design and development phase to record both quantitative and qualitative data (i.e., effectiveness). The EEGs are developed to evaluate the critical tasks needed to achieve the exercise objectives. Ideally, the use of SMART ...'" "Acronyms need to be spelled out on the first reference. This acronym is widely used but not spelled out except in the acronyms table and on page 50. Change to Exercise Evaluation Guidance (EEG) on the first reference and then use EEG subsequently. EEG should not be plural (i.e. EEGs in further reference.) Remove (i.e., effectiveness). The combination of qualitative and quantitative does not guarantee it is effective." "EEG Development." "There is confusion throughout this document whether this is plural or singular. If a single guide is written to evaluate exercises then this should read EEG throughout. If it is truly multiple guides, please provide an example."

**Response:** Acronym was defined at first use, no change made. HSEEP uses EEG in the plural form, EEGs. To maintain consistency with HSEEP, no change made. Change made to remove “i.e. effectiveness.”

**Comment:** “First sentence ‘ADEC role in exercise evaluation is focused on assuring the ODPCP is adequate in content and execution (i.e., the ODPCP holder demonstrates oil spill response capability).’” “Remove ‘ADEC role in exercise evaluation is focused on assuring the ODPCP is adequate in content and execution (i.e., the ODPCP holder demonstrates oil spill response capability).’ Replace with ‘ADEC’s role in the exercise evaluation is to validate the ODPCP and ensure the plan holder is response-ready.’ The content of the ODPCP is determined adequate or inadequate in the review process.”

**Response:** The language mirrors language used in regulation at 18 AAC 75.485. The alternative phrasing suggested by the commenter is not an appropriate replacement for the relevant portion of the public review version of the Exercise Manual.

**Comment:** “Usage error. Last line of the first paragraph under Evaluation Planning” “Remove ‘ultimately, the improvement’ and change to read ‘and improve the planning process.’”

**Response:** Language is edited for clarity.

**Comment:** “Second Paragraph under Evaluation Team.” “These are unquantified measures. What does ADEC mean by ‘early in the planning process’ and what is considered a small drill? Open-ended comments like these leave the door open to the plan holder getting marked down for comments from the Department when no reliable measure has been defined.”

**Response:** Language is edited to add specificity.

**Comment:** “Third bullet under Preparing for Evaluation Documentation.” “Remove Step-by-step. If someone is in the position of being an evaluator of an exercise it suggests they have some knowledge about the process. That person would not need a prescriptive set of details.”

**Response:** Detailed instructions for evaluators ensure consistent evaluations. Step by step has been replaced by detailed.

**Comment:** “For smaller facilities or in less complex exercises, the Controller and Evaluation Handbook may be a brief, simple document. For more complex exercises, it will be a longer document, containing all the information and tools that evaluators require” “Define what is meant by small, complex and brief. This is too open ended to be a regulation.”

**Response:** HSEEP methodology, like ICS, is flexible and scalable. One primary benefit of HSEEP is that the methodology can be scaled to wide range of regulated operations. The language is provided to emphasize this point. No change made.

**Comment:** “Second paragraph under Exercise Data Analysis ‘During data analysis, the evaluation team consolidates data collected during the exercise and determines whether players performed critical tasks and effectively met the exercise objectives. The evaluation team also takes notes on the course of exercise play, demonstrated strengths, and areas for improvement. This informs the evaluators with not only what happened, but why events happened.’” “Remove ‘During data analysis ...’, ‘This informs the evaluators with not only what happened, but why events happened.’ It is redundant”

**Response:** Change made to remove “during data analysis” and the last sentence in the paragraph.

**Comment:** “Third paragraph. ‘During the data analysis, it is important that evaluators review each critical task not completed as expected and each objective not met, with the aim of an identified issue toward which the evaluator can direct an improvement. When conducting a root-cause analysis, the evaluator should attempt to trace the origin of an exercise event back to earlier events and their respective causes. Root-cause analysis may also require the review and evaluation of the ODPCP.’” “Remove ‘During data analysis ...’, change root cause to reason so continuous improvement can be achieved and corrective actions can be addressed.” “Remove ‘A root cause is the source of, or underlying reason behind, an

identified issue toward which the evaluator can direct an improvement. When conducting a root-cause analysis, the evaluator should attempt to trace the origin of an exercise event back to earlier events and their respective causes. Root-cause analysis may also require the review and evaluation of the ODPCP.’ A root cause analysis or RCA is a structured procedure that is used in the oil and gas industry for comprehensive incident investigations. Conducting an RCA for a simple mistake in an exercise is overkill and far too comprehensive an action to correct the mistake.”

**Response:** The process of Root Cause Analysis is not unique to oil and gas incidents. It used in exercise evaluation as a best practice method to trace the origin of an event or issue back to earlier events and their respective cause. Root Cause Analysis enables exercise stakeholders to determine how best to address areas for improvement. For additional clarity, a description of Root Cause Analysis has been added to The Glossary of Terms.

**Comment:** “Third bullet under Exercise Data Analysis. ‘Does the current ODPCP support critical tasks and objectives?’ Remove ‘Does the current ODPCP support critical tasks and objectives?’” “It is not the evaluator's job to assess the adequacy of the ODPCP. That is done in the public review and approval process of the plan”

**Response:** Alaska oil spill preparedness and response statutory responsibilities and authority are based upon the premise that, while an oil spill response plan that exists on paper may be evaluated intellectually, the plan, equipment, and people are evaluated together only through exercises or through response to an actual spill. Under AS 46.04.030(e)(2), DEC conducts exercises of ODPCP holders to demonstrate their ability to carry out the ODPCP. The regulations at 18 AAC 75.485 and 18 AAC 75.565 provide a framework to implement the statutory provisions. 18 AAC 75.485 states “the department conducts announced and unannounced discharge exercises, to ensure that an ODPCP is adequate in content and execution.” No change made.

**Comment:** “Under Improvement Planning” “Remove ‘After the evaluation phase concludes, the improvement planning process begins.’ It is redundant.”

**Response:** The department has determined that this phrase adds clarity. No change.

**Comment:** Glossary of Terms: “Change to Definitions to be consistent with ADEC regulations.”

**Response:** The Glossary of Terms is provided to introduce or explain terms and concepts relevant to the field of HSEEP and DEC 485 exercises. No change made.

**Comment:** “Exercise Planning Task List, Weeks 24-26. ‘Set general objectives based on the ODPCP”” “Change to ‘Set objectives to build the strength of the response team and remedy areas of improvement.””

**Response:** The primary objective of an exercise under department regulations is for the plan holder to demonstrate the ODPCP or streamlined plan is adequate in content and that it can be carried out by the operator. No change made.

**Comment:** “Exercise Planning Task List, Weeks 22-23. ‘Develop specific objectives based on the ODPCP”” “Change to ‘Refine objectives.””

**Response:** Deleted bullet to remove redundancy as refining objectives is provided in a following bullet.

**Comment:** “Exercise Planning Task List, Weeks 22-23. ‘Develop scenario to assess objectives • Reference the ODPCP, including planning scenarios”” “Change this to ‘Develop Scenario utilizing tools from the ODPCP and real world data.’ A scenario is a simulation of a real life situation. If you were reporting out an actual scenario, your verbiage describing the situation would not include the ODPCP.”

**Response:** Referencing the ODPCP and its response planning scenarios when developing exercise objectives is consistent with HSEEP, industry best practices such as IPIECA and the department's regulations. No change made.

**Comment:** “Weeks 14-18. The data from sub bullet #2 would be included in the MSEL development.” “This is redundant. Remove sub-bullet #2.”

	<p><b>Response:</b> Change made.</p> <p><b>Comment:</b> “This content does not clear up who does what. It feels in some places it is like a list for the state and in other parts it feels like it is a general list. If these items are being assigned (ADEC vs. Plan holder) all tasks should be assigned.”</p> <p><b>Response:</b> The Exercise Manual provides a common framework using HSEEP methodology for both DEC and plan holders. It identifies tasks specific to DEC or the plan holder as appropriate, as well as general tasks for the exercise planning team as a whole. No change made.</p> <p><b>Comment:</b> “Second sub-bullet under +1-2 days” “Change ampersand to the word ‘and’ to be consistent”</p> <p><b>Response:</b> Change made.</p>
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18 AAC 75.495 and 496: Area and region boundaries

180.	<p><b>Comment:</b> Two comments made suggestions for the updated figures in 18 AAC 75.495 and 496: Suggestions included changing the format to landscape, better delineating boundaries, showing the complete Aleutian Islands in their location, and adding a legend or key.</p> <p><b>Response:</b> Thank you for your comments. The figures have been updated. Please note that the figures are a visual guide; the boundaries are defined as described in the text of the regulation.</p>
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18 AAC 75.990: Definitions

181.	<p><b>Comment:</b> Prince William Sound towing package: Multiple commenters supported the removal of the BAT analysis requirement for emergency tow lines for tank vessels in current 18 AAC 75.425(e)(4)(A)(iii), in concert with changes to 18 AAC 75.027 that incorporates requirements 33 C.F.R. 155.235 and removed the use of the “Prince William Sound towing package” defined in 18 AAC 75.990 for tank vessels operating at the Valdez marine terminal. Some comments requested that the option to use the PWS towing package be retained, either as is, or with updated towline breaking strength requirements to match the International Maritime Organization (IMO) standards in 33 C.F.R 155.235. One commenter objected to the removal of the PWS towing package and suggested it should remain available for use in other ports and at future Arctic ports. Some commenters also requested that the department include additional criteria that the tow package be deployable from the bow of the tanker within 15 minutes specifically for tank vessels calling at the Valdez Marine terminal or statewide.</p> <p><b>Response:</b> Thank you for your comments. The new performance standard for towing arrangements for tank vessels greater than 20,000 deadweight tonnage in the International Maritime Organization (IMO) standards in 33 C.F.R. 155.235 in 18 AAC 75.027(f) applies to all tank vessels operating in state waters. The requirement to use the PWS towing package only applied to tank vessels operating at the terminal in Valdez. Towing arrangements that meet this standard satisfy the use of best available technology. Under the new regulation, all tank vessels over 20,000 deadweight tonnage must meet this standard unless waived under 18 AAC 75.015 by the department. The department did not agree that the additional recommendations provide increased protection, either for towing systems statewide or specifically for the PWS tank vessel recovery system that includes not only multiple towing systems but also a well-established escort vessel system.</p>
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182.	<p><b>Comment:</b> Two comments propose to change the definition of “transmission pipeline” in 18 AAC 75.990 to remove reference to gathering lines, as well as to remove the reference to gathering lines in 18 AAC 75.451(b)(6).</p> <p><b>Response:</b> These comments address provisions that DEC did not propose to change, and therefore the changes suggested by these comments are outside the scope of the proposed regulations. The use of “gathering lines” in 18 AAC 75.451(b)(6) is correct. Gathering lines are included in the definition of “production facility” in AS 46.04.900. The comment regarding removing gathering lines from the</p>
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	definition of “transmission lines” may be considered for a future regulations package, but will not be incorporated now.
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183.	<p><b>Comment:</b> Two comments request the repeal of 18 AAC 75.990(195)(C), part of the definition of “sufficient for review”:</p> <ul style="list-style-type: none"><li>• “Withdraw – supporting information typically provided after RFAI”</li><li>• “Amended. The provisions of (C) should be removed. It is unlikely ADEC would request supporting documentation for a sufficiency review. Recommend repealing (C) in this section.”</li></ul> <p><b>Response:</b> Comments noted. The definition of “sufficient for review” under 18 AAC 75.990 is not proposed to change, aside from a technical update of the citation in (B). These comments, therefore, are outside the scope of the proposed regulations. No change.</p>
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General Comments: Language

184.	<p><b>Comment:</b> Throughout the proposed regulations, some comments request that that the phrase “oil terminal facility” be used instead of “crude or non-crude oil terminal facility.”</p> <p><b>Response:</b> The department agrees with this editing recommendation. Because this is an edit that does not affect the meaning of the regulations, we have edited places where “crude or noncrude oil terminal facility” was used instead of “oil terminal facility” in Article 4: 18 AAC 75.430(c)(1) and 18 AAC 75.432(a) and (b).</p>
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185.	<p><b>Comment:</b> Throughout the proposed regulations, two commenters requested that the phrase “crude oil transmission pipeline” be used in place of “pipeline” or “transmission pipeline”. A commenter has suggested a concurrent change for definition of “transmission pipeline” in 18 AAC 75.990: “‘crude oil transmission pipeline’ means a pipeline through which crude oil moves in transportation, including line pipe, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units; ‘crude oil transmission pipeline’ does not include [GATHERING LINES], flow lines, or facility oil piping;”</p> <p><b>Response:</b> The department had not proposed to change the definition of “transmission pipeline” or its use in Article 4, so this comment is outside the scope of the proposed changes. No change. The definition of “transmission pipeline” in 18 AAC 75.990 already specifies that the pipeline must contain “crude oil,” so adding that qualifier in front of “transmission pipeline” would be redundant. The same is true of “pipeline.” We note that “crude oil pipeline” is used in 18 AAC 75.430(c)(1) and 18 AAC 75.436 to ensure the reader calculates the response planning standard for the pipeline, which may be one RPS under a plan that contains other regulate facilities. Please see the response to the recommendation to remove “gathering line” in General Comments, Row 182.</p>
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186.	<p><b>Comment:</b> Throughout the proposed regulations, comments request that the whole phrase “Oil discharge prevention and contingency plan” be used in place of shortened phrases, including “plan” and “contingency plan” for consistency and clarity.</p> <p><b>Response:</b> Thank you for your comments. The term “plan” is defined in regulations at 18 AAC 75.990. We will continue to use the term as a reference to oil discharge prevention and contingency plans approved under 18 AAC 75. Please note the definition excludes 18 AAC 75.300 - 18 AAC 75.396. We have used the full title of “oil discharge prevention and contingency plan” as we found helpful.</p>
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187.	<p><b>Comment:</b> Comments were provided recommending the phrase “facility or operation” should be replaced with “facility” throughout the regulations along with a concurrent change in the definition of “facility or operation” in 18 AAC 75.990.</p>
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**Response:** The term “facility or operation” is currently part of regulations throughout Article 4, and it was transferred to this regulation package without change. This request is outside of the scope of the proposed regulations, though it may be considered by the department at a later date.

188. **Comment:** Comments were made both in support of and against the removal of the phrase “satisfaction of the department” throughout 18 AAC 75, Article 4.  
**Response:** Thank you for your comment. Use of the phrase “to the satisfaction of the department” does not add specific, measurable criteria to the regulations. As part of the effort to streamline language throughout 18 AAC 75, Article 4, the department has removed this phrase where appropriate. The department notes that removing this phrase does not reduce existing codified requirements or DEC authority. DEC reviews plan and amendment applications as described in these regulations to determine whether they satisfy regulatory requirements. No change.

189. **Comment:** At numerous locations throughout the regulations, comments suggest using the correct language for the amendment or application package.  
**Response:** We have reviewed the regulation package and made edits to ensure that we have the terms “application package” or “application” as intended.

General Comments: Other

190. General comments were received as follows:  
**Comment:** General comments were received noting that the regulations rewrite has resulted in improvements.  
**Response:** General comments noted. Thank you.  
**Comment:** Comments were received noting generalized concerns regarding the proposed regulations.  
**Response:** General comments noted. Thank you. Please see responses to specific comments received.  
**Comment:** General comments were received requesting that the department not lessen current levels of environmental protection.  
**Response:** General comments noted. Thank you. The department believes that this regulations update provides clarity and balance without weakening environmental protections.  
**Comment:** General comments were received requesting no change from current regulations.  
**Response:** General comments noted. This regulations update represents a necessary improvement.  
**Comment:** General comments were received noting improvements and also general concerns.  
**Response:** General comments noted. Thank you. Please see responses to specific comments received.  
**Comment:** General comments were made requesting clarity and standardization in the regulations.  
**Response:** Comments noted. The department has reviewed the proposed regulations language and made clarifying edits as needed.

191. **Comment:** Several comments note that the proposed regulation package does not include a timeline for the implementation of the regulations. Commenters request that adequate lead time provided to allow regulated entities time to come into compliance with any new regulations. One commenter asks whether existing processes and agreements will be retained.  
**Response:** Thank you for your comments. In response to this need, a new section has been added. 18 AAC 75.402 establishes an implementation phase and delayed timelines for complying with specific provisions, and it addresses requirements for current approved plans.

192.	<p><b>Comment:</b> General comments were received stating that plan review timelines are too long. Comments suggested that the department implement separate timelines for the review of new plan applications vs plan renewal and amendments applications.</p> <p><b>Response:</b> Comments noted. Based on comments received during public scoping, the department considered alternative overall timelines. The department will retain the plan submittal and review timelines in the proposed regulations except as revised at 18 AAC 75.455(c) to reduce the timeframe for the department to provide requests for additional information to applicants in most cases and at 18 AAC 75.455(g) to shorten the timeframe for the department to provide its decision after determining the plan is complete. Plan renewal applications and major amendment applications are substantial and will remain subject to the review timelines established in 18 AAC75.455.</p>
193.	<p><b>Comment:</b> The proposed regulations at 18 AAC 75.405(a), 18 AAC 75.475(b), and 18 AAC 75.459(a) do not retain specific statements of what is considered written notice. Several commenters request that electronic mail should continue to be considered written notice.</p> <p><b>Response:</b> Thank you for your comments. Communications by email continue to be acceptable written notice as required by 18 AAC 75.405(a), 18 AAC 75.475(b), and 18 AAC 75.459(a). The revision to remove the specification that electronic mail is written communication does not make it an unacceptable form of written communication. Editor's notes for sections 18 AAC 75.405, 18 AAC 75.475, and 18 AAC 75.459 each include the address for the department's electronic mail inbox that must be used for electronic mail submissions.</p>
194.	<p><b>Comment:</b> DEC Listserv, multiple regulations in Article 4. 18 AAC 75.408(c), 18 AAC 75.415(h), 18 AAC 75.455(b), and 18 AAC 75.460(b), of the proposed regulation: Two comments were received concerning the department's contingency plan regulation listserv:</p> <ul style="list-style-type: none"> <li>• A commenter supports materials being distributed electronically and having plan application packages electronically searchable, but they have concerns about the practicality of using a listserv. The commenter is concerned about implementing notice and distribution in a timely manner that allows interested parties to easily access the specific information they need.</li> <li>• A commenter supports this change as a major improvement since interested parties can register to receive information, and the published paper Public Notices are expensive and time consuming for the applicant.</li> </ul> <p><b>Response:</b> Comments noted: The department is committed to distributing timely notifications via the listserv. Please note public notices will continue to be posted on the State of Alaska Online Public Notices webpage at <a href="https://aws.state.ak.us/OnlinePublicNotices/">https://aws.state.ak.us/OnlinePublicNotices/</a>. No change to the use of listervs. Please note 18 AAC 75.460(b) no longer references the department's listserv.</p>
195.	<p><b>Comment:</b> Several comments express concerns over the implementation of a single email inbox. These include:</p> <ul style="list-style-type: none"> <li>• "...there is concern posting to a singular INBOX instead of submittal to specific ADEC personnel could result in delayed response and increased time to process requests. ADEC must continue to allow plan holders to email notifications, application packages, forms, and requests to individual staff members who oversee their plans."</li> <li>• Noting that the department should replace the INBOXNAME@ADDRESS email used in the draft regulations with the correct email.</li> <li>• Requests that information about the email inbox present in the Editor's note be moved into the main text of the regulations</li> </ul>

**Response:** Thank you for your comments. Concerns about this transition are noted. The final inbox address, [dec.odpcp.submissions@alaska.gov](mailto:dec.odpcp.submissions@alaska.gov), is included in the Editor's Note and it will be posted on the department's website and on updated forms. The editor's notes are the appropriate location for contact information in the regulations. This protocol does not restrict conversations between plan applicants and department plan review staff. It creates a streamlined process that ensures all required written communication is processed effectively.

196. **Comment:** General comments were received both in support of, and generally critical of the reorganization of information in current sections 18 AAC 75.425 and 18 AAC 75.445 into new sections general comments on new sections 18 AAC 75.448 - 18 AAC 75.453.  
**Response:** The department has determined that the reorganization of regulatory content from current sections of 18 AAC 75.425 and 18 AAC 75.445 into sections 18 AAC 75.448 - 18 AAC 75.453 improves clarity and ensures the content and review criteria are aligned. The department has reviewed and revised the proposed regulations in response to specific comments, for overall clarity, and to remove duplicative language.

197. **Comment:** 18 AAC 75.425. "The language in this section reappears in almost its entirety within new proposed sections 18 AAC 75.448, .449, .450, .451, .452, and .453. In most instances, the language in the new sections is verbatim with little to no change to streamline or update to improve useability and ability to implement. Sometimes the verbiage of .425 is paired verbatim with verbiage of .445 in the new proposed sections. It is concerning that this content is presented as 'repealed,' when, in fact, it is simply re-numbered. ADEC should have identified the specific changes and presented them as proposed changes following the formatting requirements of the 'Drafting Manual for Administrative Regulations,' 22nd Edition, August 2018, as promulgated by the State of Alaska Department of Law. Recommend withdrawing the proposal to repeal this section and withdrawal addition of new proposed sections 18 AAC 75.448, .449, .450, .451, .452, and .453."  
**Response:** Thank you for your comment. The Public Notice provided reasonable notice that, even though the specific section numbers were proposed for repeal, the contents of those sections would largely be retained. The Public Notice specifically stated that the "contents" of 18 AAC 75.425 and 18 AAC 75.445 were being "incorporate[d]... into new sections[.]" The Public Notice identified specific items in new sections 18 AAC 75.448, 449, 450, 451, 452, and 453 that would address the same subject matter as former sections 18 AAC 75.425 and 18 AAC 75.445, and also identified specific items that had changed. The department is moving forward with the restructured regulations.

198. **Comment:** Two commenters request an additional comment period after the department responds to comments and makes revisions, due to the scope of the package and potential for revisions after based on comments received.  
**Response:** An extended three-month public comment period was provided for this regulations package. Public notice was provided for the changes in this regulation package, including for the reorganization of content and approval criteria in sections 18 AAC 75.448 - 18 AAC 75.453. There are not substantive revisions to regulations that were not proposed to change, although grammar and minor technical edits were made. There will not be a second public comment period on this package.

199. **Comment:** Several commenters request that DEC incorporate language requiring Oil Spill Prevention and Contingency Plan holders to comply with all applicable state and federal regulations concerning human and environmental safety into the Article 4 regulations.  
**Response:** Thank you for your comments. Plan holders are required to comply with applicable state and federal laws regardless of whether Article 4 provides an additional requirement to comply with them. Similarly, the regulations in Article 4 do not supersede or invalidate other state and federal regulations that apply to plan holders. No addition to regulations.



200. Two comments were received regarding including Area or Regional plan information in the regulations:  
**Comment 1:** “ADEC regulations should ensure that plan holders understand the importance of aligning their planning with agency area planning in place for Alaska. Alaska statute states that the state master plan for oil and hazardous substance discharge should take operators' plans under state regulation into consideration. It is just as important that operators' plans are consistent with the state master plan and regional master plan (which are implemented today as the Alaska Regional Contingency Plan and four Area Contingency Plans). CIRCAC request: Add language to Article 4 of 18 AAC 75 stating that plans subject to these regulations should also align with the Alaska Regional Contingency Plan and relevant Area Contingency Plan(s).”  
**Response 1:** Comment noted. The recommendation is beyond the scope of this regulations package.  
**Comment 2:** One commenter requested including and updating information regarding Potential Places of Refuge (PPORs) in subarea plans.  
**Response 2:** Thank you for your comment. The recommendation is beyond the scope of this regulations package. We encourage the commenter reach out to the Area Committee to ensure their concerns for Potential Places of Refuge in Prince William Sound are considered. Contact information for the Area Committee is available on the department website at <https://dec.alaska.gov/spar/ppr/contingency-plans/response-plans/prince-william-sound-area>. No changes to the proposed regulations.

201. **Comment:** Comments request that the department consider the history of spills in Cook Inlet as well as the history of spills associated with Hilcorp Alaska when writing regulations and working to maintain environmental protections  
**Response:** Thank you for expressing your concerns. No changes made to the proposed regulations

202. **Comment:** One comment suggested that DEC should initiate formal government to government consultations with Tribes throughout the state to allow the state to benefit from traditional knowledge and to ensure concerns from these nations are understood and considered.  
**Response:** We appreciate your comments. DEC is committed to meaningful engagement with all stakeholders, including tribal entities. We encourage tribal entities to sign up for the department's contingency plan listserv as described in the editor's note for 18 AAC 75.408 to receive notifications for contingency plan reviews. We welcome your comments on contingency plan application packages.

203. Comments on technical edits not discussed elsewhere in this summary:  
**Comment:** “Revise 18 AAC 75.459(b): 18 AAC 15.070 (a) states that it is limited to a list of specific permits and ODPCP approval is not listed.” Suggested revision: A preissuance conference under this section will be conducted in the manner provided under 18 AAC 15.070(b) - 18 AAC 15.070(f) [18 AAC 15.070].  
**Response:** Comment noted. The department has determined that the language is appropriate as written; no change. The use of the phrase "in the manner under" does not incorporate 18 AAC 15.070(a) because that subsection only addresses which actions are subject to preissuance conferences, not the manner in which the conferences are conducted.  
**Comment:** 18 AAC 75.432(a)(1). Remove the comma after “72 hours” to be consistent with wording for 18 AAC 75.432(a)(1), 18 AAC 75.436(a)(1), and 18 AAC 75.438(a)(1).  
**Response:** Grammar streamlined by removing comma at 18 AAC 75.432(a)(1).

**Comment:** 18 AAC 75.432(d)(5)(B). “The Department of Law Drafting Manual does not recognize use of a parenthetical plural as used in the term ‘failsafe valve(s).’ ADEC should revise the proposed regulation to clarify its intent as to singular or plural valves.”

**Response:** Correction made. The department notes that the use of the plural also includes the singular, as described at AS 01.10.050.

**Comment:** “18 AAC 75.445(c)(1)[*sz*]. A semi-colon should be used instead of a comma after the new language.”

**Response:** Correction made to relevant language at 18 AAC 75.455(c)(1).

**Comment:** 18 AAC 75.408 Editor's Note “The word ‘Internet’ is used in the proposed text in 18 AAC 75.408; therefore, there is no need to remove it from the Editor's Note. Recommend withdrawing removal of the word ‘Internet.’”

**Response:** Proposed change retained. The use of plain English in Editor's notes improves readability.