

Public Comment Response Summary
Proposed Revisions to 18 AAC Chapter 75, Article 2
July 7, 2017

Introduction

The Alaska Department of Environmental Conservation’s Prevention, Preparedness, and Response Program proposed this package to update the dollar amounts for financial responsibility proof under 18 AAC 75, Article 2 to align with statutes at AS 46.04.045. In addition, we proposed several changes to streamline processes for financial responsibility applicants.

Summary of changes

This regulation amendment includes the following changes:

- 18 AAC 75.235 and 18 AAC 75.270 are amended to update the financial responsibility dollar amounts. The increased dollar amounts correspond with the updated Urban Alaska CPI for the second half of 2022, as required by the statutory process outlined in AS 46.04.045.
- 18 AAC 75.205 is amended to remove the requirement that the application must be signed under oath or affirmation.
- 18 AAC 75.215(c) is amended to limit original application documentation that must be submitted by certified mail or by courier to documentation for self-insurance or a guaranty.
- 18 AAC 75.236(c) is amended to remove the requirement that the required statement certifying the maximum daily production of oil at a facility during the period covered by the application must be notarized.

In response to the questions and comments received during public review period, the department has not changed the proposed regulation amendments.

The following table is organized in a comment/response format to address the comments made during the formal public review and comment period that ended on July 6, 2023. Two submissions were received during the public comment period. Both submissions included comments opposing the changes in 18 AAC 75.205, 18 AAC 75.215(c), and 18 AAC 75.236(c).

Response Summary

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| 1. | <p>Comment: 18 AAC 75.235 and 18 AAC 75.270. Two commenters expressed support for updating the dollar amounts in 18 AAC 75.235 and 18 AAC 75.270 for proof of financial responsibility according to the process required by AS 46.04.045. One commenter identified the increases as “minimal,” and the second commenter stated that the increase is inadequate to account for the increased cost of responding to a significant spill. The commenter notes the base amount was established by the Alaska Legislature over 30 years ago and recommends that DEC revisit the financial responsibility base amount established under AS 46.04.040 and make recommendations to the Alaska Legislature to make appropriate adjustments.</p> <p>Response: We thank the commenters for support of the increase financial responsibility proof amounts. Recommendations to revisit the base amount established for financial responsibility proof increases is noted. As acknowledged by the commenter, it is beyond the scope of this regulation package. No change.</p> |
| 2. | <p>Comment: One commenter proposed that ADEC post certificates of proof of financial responsibility and the department’s basis for approving the financial responsibility on the ADEC Industry Contingency Plan web page. The stated purpose is to advance transparency and access to information about operator compliance.</p> <p>Response: This comment is out of scope of the regulations package; no changes were proposed to 18 AAC 75.237 which specifies that financial responsibility applications, operations files, and proof of ability to respond to oil spills are subject to public records statutes at AS 40.25.220 – 40.25.220.</p> |

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| 3. | <p>Comment: 18 AAC 75.205(c). Both commenters objected to removing the requirement for the application submission to be signed “upon oath or affirmation” by persons specified in 18 AAC 75.205(c)(1)-(8). One commenter expressed concern that this change would not ensure an authorized signature had been obtained. The second commenter expressed concern that the change would not ensure the information in the application was true and accurate, and it would not ensure that financial responsibility is in place for a real event. The commenter also stated that a notarized signature upon oath or affirmation is not a burden to applicants and is a standard practice. Finally, the commenter said that the department had not explained why this change was proposed or provided justification for it.</p> <p>Response: Thank you for your comments. The department is committed to ensuring that financial responsibility applications are signed and submitted by persons authorized to do so as identified in 18 AAC 75.205(c). This will be accomplished by modifying the Financial Responsibility Application and Checklist to replace the sworn signature statement with a comparable unsworn certification statement under penalty of perjury. This is in keeping with the certification statement required on the oil discharge prevention and contingency plan application form, the underground storage tank financial responsibility application form, and other department permit application forms. The department has recourse if a person signs the application that is either not authorized to do so or who knows that any information is not true, correct, or complete. No change.</p> |
| 4. | <p>Comment: 18 AAC 75.215. In addition to requesting the department maintain the requirement for notarized documents, one commenter noted the importance of ensuring their timely delivery (understanding they intended to say timely delivery of the original documents). The second commenter did not object to submission of the financial responsibility application by electronic mail, but they questioned why original documents for self-insurance or a guaranty are required to be provided. They questioned why all forms of proof could not be submitted electronically and recommended that the department require the same original document submission for all types of financial responsibility proof.</p> <p>Response: Thank you for the comments. We find that electronic mail submission is secure, timely, and it is easily trackable by both the department and the financial responsibility applicant. We agree that it may be most beneficial for all forms of proof to be submitted by electronic mail, and we are considering changes to incorporate that into a future regulation package. No change.</p> |
| 5. | <p>Comment: 18 AAC 75.236(c). Both commenters included a request to maintain the requirement for an onshore production facility financial responsibility applicant to notarize their certification of the maximum daily oil production range at the facility during the application period. One commenter specified the importance of enduring the truthfulness and accuracy of the financial responsibility application, and they believe a sworn oath or affirmation makes it more certain that the applicant is truthful and accurate. The same commenter noted the department had not explained why this change was proposed or provided justification for it.</p> <p>Response: Thank you for the comments. We agree that it is important that all components of a financial responsibility application are truthful, correct, and complete. As noted in the response to Comment #3, this will be accomplished by including a comparable unsworn certification statement that must be signed under penalty of perjury. This is compatible with other current department application forms listed above. The department has recourse if a person signs the application or separate statement concerning onshore production facility maximum daily production range of oil at their facility. No change.</p> |